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A.Nos.5801 and 5802 of 2022

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in
C.S.(Comm.Div.)Nos.6 and 7 of 2022

C.SARAVANAN, J.

These applications are defended by the learned counsel for the respondent/plaintiff on the ground that the suit summons was served on the applicant/defendant on 01.04.2022 and that the applicant/defendant ought to have filed the written statement on or before 06.06.2022. Instead, the written statement was filed on 13.06.2022 in the Registry and thereafter served on the respondent/plaintiff on 20.09.2022. Thus, there is an enormous delay in service of written statement which is beyond 120 days as is prescribed under the Code of Civil Procedure, 1908, (herein after referred to as CPC) as amended for the purpose of the Commercial Courts Act, 2015.

2. In this connection, learned counsel for the respondent/plaintiff has referred to Rule 71 of the Civil Rules of Practice and Circular orders. The content of which has been extracted below:

“71. Party filing any proceeding to furnish the other side with a copy:-

A party or pleader, filing any proceeding, shall, on demand in writing furnish to any other party a copy of the proceeding, upon payment therefore at the rate of ten paise for every hundred words, if in manuscript or



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at double this rate if copy is typed or printed, four figures being calculated as one word: Provided that one copy of a written statement and of a memorandum of appeal or of objections and when a concise statement of a claim has been presented for service with a summons one copy of the plaint, shall on the like demand, be furnished free of charge to each party appearing by a separate pleader”

3. It is submitted that unless a copy of the written statement was served on the respondent/plaintiff, it cannot be construed as proper service for the purpose of computation of limitation and that the time between the date of service of summons and actual service on 08.09.2022 was beyond the period of 120 days prescribed under the provisions of CPC, as amended for the purpose of the Commercial Courts Act, 2015.

4. I have considered the arguments advanced by the learned counsel for the applicant/defendant and the learned counsel for respondent/plaintiff.

5. Under Section 16(3) of the Commercial Courts Act, 2015, it has been stated that where any provisions of any Rule of the Jurisdictional High Court or any amendment to the Code of Civil Procedure, 1908 (5 of 1908), by the State Government is in conflict with the provisions of the Code of



Civil Procedure, 1908 (5 of 1908), as amended by this Act, the provisions of the Code of Civil Procedure as amended by this Act shall prevail.

6. Thus, the limitation for filing Written Statement as far as commercial dispute is concerned, it will be only in terms of amended provisions of CPC in the Commercial Courts Act, 2015.

7. Ordinarily in a Civil Suit, a defendant is required to file a Written Statement within a period of 42 days in terms of order IV Rule 5 of the Madras High Court Original Side Rules, 1956, framed under Section 129 of the CPC. However, a special limitation is prescribed under the amended provisions of CPC and in terms of Section 16(3) of the Commercial Courts Act, 2015.

8. Thus, a limitation which is prescribed under the provisions of the said amended provisions of CPC will apply only for commercial dispute. In these cases, admittedly the 30 days period would have expired on 01.05.2022. However, the Court was closed on account of summer vacation and therefore, the applicant/defendant ought to have filed the Written



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Statement on the reopening day i.e., on 06.06.2022 but the applicant/defendant filed written statement in the Court Registry only on 13.06.2022.

9. The written statement was returned for certain defects pointed out by the Registry and was thereafter re-presented by which time, the limitation had expired for filing the Written Statement.

10. In the case of **Ok Play India Private Limited Vs. A P Distributors and another**, 2021 SCC Online Del 4043, the Hon'ble Supreme Court has held as under:-

“Having heard learned counsel for the respective parties and in the facts and circumstances of the case and considering the fact that the written statement was filed on the 34th day of the service of notice of summons, however, the application for condonation of delay was filed which was beyond the period of 120 days, the High Court has taken too technical view in setting aside the order passed by the learned Commercial Court directing to accept the Written Statement filed on behalf of the appellants/defendants. The High Court was not justified in setting aside the order passed by the learned Trial Court directing to take the Written Statement on record.

In view of the above and for reasons stated herein above, the present appeals succeed. The impugned



judgement and orders passed by the High Court are hereby quashed and set aside and the order passed by the learned Trial Court directing to take Written Statement on record after condoning the delay in submitted the Written Statement is hereby restored.

The present appeals are accordingly allowed. No costs.”

11. Therefore, the delay in re-presenting the Written Statement cannot be objected. In my view, the Written Statement was filed partially beyond the period of 30 days. The service of the Written Statement on the respondent/plaintiff on 20.09.2022 cannot mean that the Written Statement which was earlier filed on 13.06.2022 was not a proper presentation of Written Statement for the purpose of computation of limitation.

12. Reference to Rule 71 of the Civil Rules of Practice and Circular Orders of the respondent/plaintiff is misplaced.

13. As per *proviso* to Rule 71 of the Civil Rules of Practice and Circular Orders, one copy of the written statement and of a memorandum of appeal or of objections and when a concise statement of a claim has been presented for service with a summons, one copy of the plaint shall on the



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like demand, be furnished free of charge to each of the parties appearing by
a separate pleader.

14. The aforesaid *proviso* does not mean that the party has to first
serve a copy of the pleading on the other side. All that is required is that the
opposite party can demand for a copy of the same.

15. In my view, the objection is therefore liable to be rejected.
Accordingly, the applications stand allowed.

04.01.2023

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