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A.No.5885 of 2022

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in
C.S.No.177 of 2019

C.SARAVANAN, J.

The second and third defendants in the above suit have filed this application for condoning the delay of 1153 days in filing the Application to set aside the *ex-parte* decree passed by this Court on 24.06.2019.

2. The amended provisions of Order V Rule 1 and Order VIII Rule 1 of C.P.C are applicable for the purpose of Commercial Dispute under the Commercial Courts Act, 2015. The present dispute being a commercial dispute is applicable to the facts of the case.

3. The applicants/second and third defendants were required to file their Written Statement within a period of thirty days from the date of receipt of summons or within a period of ninety days thereafter together with an application to condone the delay in filing the Written Statement.



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4. The Court records indicates that the suit summons on the defendants which includes the applicants herein was served on 18.03.2019.

In this case, the 120th day expired on 14.06.2019. Since the applicants/second and third defendants failed to file their Written Statement within the period of 120 days and also failed to enter appearance earlier, they forfeited their rights to file their Written Statement.

5. The suit was decreed as *ex-parte* on 24.06.2019. The respondent/plaintiff has filed A.No.3219 of 2021 for a final decree and A.No.3220 of 2021 for appointment of Advocate Commissioner to sell the mortgaged property. It is at this stage, the applicants have filed these two applications to set aside the decree as the property which is sought to be brought to sale belongs to the applicants herein, which was mortgaged by a Registered Mortgage Deed dated 28.01.2014.

6. The specific case of the applicants is that the second applicant was merely an employee of the first defendant M/s.Sabari Alloys and Metals India Private Limited and that the said company is controlled by one Mr.Sashi Kumar Nair. The further case of the applicants is that the said



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Mr.Sashi Kumar Nair is also a promoter of another company named M/s.Saga Steel Private Limited and that to facilitate the first respondent/plaintiff herein to raise capital, certain bill discounting was adopted to make it seem as if the first defendant purchased the steel ingots from M/s.Saga Steel Private Limited and that said the company in turn supplied it to the first defendant M/s.Sabari Alloys and Metals India Private Limited, who defaulted in paying the amount.

7. The further case of the applicants/second and third defendants is that the partner of the first respondent/plaintiff Mr.Govind Prasad and the director of the second respondent/first defendant namely Mr.Sashi Kumar Nair are friends and have targeted the first applicant herein who was merely an employee of the second respondent/first defendant Company on account of fall out their relationship.

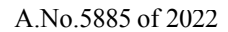
8. That apart, it is submitted that the first applicant had also settled the property in favour of the second applicant herein by a Registered Settlement Deed dated 12.05.2017. It is further submitted that the first applicant though was a Director of the second respondent/first defendant's



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company was merely a paid employee drawing a paltry salary from the second respondent/first defendant's company and its Sister Company M/s.Saga Steel Private Limited.

9. It is further submitted that the family of Mr.Sashi Kumar Nair, the promoter of the second respondent/first defendant company and the said M/s.Saga Steel Private Limited have several personal properties and therefore, instead of proceeding against the principal defaulter represented by its Director Mr.Sashi Kumar Nair and his family, the first respondent/plaintiff has colluded with Mr.Sashi Kumar Nair to harass the applicants/second and third defendants. It is further submitted that there is a sufficient cause for condoning the delay inasmuch as after the suit summons was served on 18.03.2019, the first applicant has escalated the issue to Mr.Sashi Kumar Nair and that Mr.Sashi Kumar Nair informed that the first respondent/plaintiff agreed to settle the matter and that no harm will be caused to the first applicant.



11. It is submitted that the applicants are not remediless. There is a dispute between the first applicant and the Director of the second independent/first defendant company. It is open for the applicants to workout remedy in accordance with law to recover the loss allegedly inflicted on them by the transactions.



12. I have considered the arguments advanced by the learned Counsel for the applicants and the learned Senior Counsel for the first respondent.

13. The applicants/second and third defendants have lost their rights to file the Written Statement and they forfeited their rights in terms of the amended provisions of C.P.C vide Order V Rule 1 of C.P.C read with Order VIII Rule 1 of C.P.C. They cannot raise any defence. The suit has also been decreed on account of the failure of the applicants/second and third defendants to file vakalat earlier.

14. No useful purpose will be served either by condoning the delay or by relegating the parties to the stage of trial, inasmuch as the documents which have been filed by the first respondent/plaintiff at the time of recording of evidence before the learned Master indicates that supplies were effected by the first respondent/plaintiff between 05.01.2014 and 07.10.2014 to the second respondent/first defendant. These invoices are backed with consignments notes issued by the Transporter.



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15. That apart, the filing of the present suit was preceded with a legal notice dated 15.05.2018 to which, the applicants/second and third defendants had also replied. Despite receipt of the aforesaid Legal Notice, the applicants/second and third defendants have failed to enter appearance by filing any Written Statement after the suit summons was served on 18.03.2019.

16. In my view, the applicants/second and third defendants have not made out any justifiable case for condoning the delay in filing the application for setting aside the *ex-parte* decree dated 24.06.2019. It is not as if the applicants-second/third defendants are without any remedy against the other directors of the second respondent/first defendant's company on account of the alleged fraud played on them. They are entitled to proceed against the said Company.

17. Therefore, while declining to condone the delay of 1153 days and to set aside the *ex-parte* order, I leave it open for the applicants-second/third defendants to workout their remedy against the second respondent/first



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defendant in the manner known to law. This application stands dismissed with the above observations.

09.02.2023
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