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*A.No.25 of 2015
in C.S.No.82 of 2006
and C.S.No.81 of 2006*

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P.VELMURUGAN, J

This application has been filed to condone the delay of 1654 days in filing the written statement by the first defendant in C.S.No.82 of 2006.

2. Learned counsel appearing for the applicant / first defendant submitted that the suit summons were served on the applicant/first defendant only on 26.04.2006 and he should have filed the written statement on or before 14.06.2006. While that being so, the entire case records got misplaced while shifting their office and that certified copies of the documents were applied on 07.10.2010 and those documents could be obtained only on 11.11.2010. After obtaining those documents, the written statement was filed by the applicant/first defendant with a delay of 1654 days and hence, the delay had occasioned, which is neither willful, nor wanton, but only due to the said reason.

3. A counter affidavit has been filed by respondents 1 and 2 /



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plaintiffs in this application, stating that the suit is of the year 2006 and suit summons were served on the applicant/first defendant only on 26.04.2006 and he ought to have filed the written statement within seven weeks even as per the Original Side Rules of this Court. However, the applicant has averred in Paragraph No.4 of the above application that due to misplacement of case bundles, he could not file the written statement within the time limit. After getting the certified copies of those documents on 11.11.2010, he filed the written statement with a delay of 1654 days. However, the applicant has not explained the delay between 26.04.2006 and 07.10.2010. It is further alleged that the applicant has received the plaint copy as early as on 26.04.2006 only and there is no necessity for getting the certified copies of the documents, and the applicant could have filed the written statement based on the records available with them. It is further stated that, as per the decision of the Hon'ble Supreme Court in *M/s.SCG Contracts India Pvt. Ltd. Vs. K.S.Chamankar Infrastructure Pvt. Ltd. & Ors.* reported in (2019) 12 SCC 210, in a commercial dispute arising out of the Commercial Courts Act, 2015, the written statement cannot be entertained, if the same has been filed beyond



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the maximum period of 120 days from the date of receipt of the suit summons. Since the present suit is falling under the category of Commercial Division, the delay of 1654 days in filing the written statement cannot be entertained.

4. Heard both sides and perused the records available on record.

5. On a perusal of the records, it is seen that the suit is of the year 2006. The affidavit filed in support of this application is dated 14.12.2010, even prior to the Commercial Courts Act, 2015 came into force. Unfortunately, for one reason or the other, the same was taken on file only in the year 2015. After the enactment of the Commercial Courts Act in the year 2015, the present suits were transferred to this Commercial Division in the year 2018.

6. When the matter was came up for hearing on 06.06.2024, this Court directed respondents 1 and 2 / plaintiffs to file counter affidavit. As directed by this Court, respondents 1 and 2/plaintiffs have filed the



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counter affidavit, however respondents 1 and 2, instead of giving reason for this application, have once again reiterated the merits of the suit.

7. As per the amended Civil Procedure Code, the written statement is to be filed within a period of 30 days, but there is no foreclosure in Commercial Division. However, the Hon'ble Supreme Court has taken a lenient view and has stated that grace period of a further 90 days is granted which the Court may employ for the reasons to be recorded in writing and on payment of such costs as the Court deems fit to allow such written statement to come on record. What is of great importance is the fact that beyond 120 days from the date of service of summons, the Defendant gets the right of filing written statement forfeited and the Court shall not allow the written statement to be taken on record, which was the case in the said decision of the Supreme Court.

8. Admittedly, this application was filed before enactment of the Commercial Court Act, 2015. Considering the facts and circumstances, though this Court is not satisfied with the reasons stated in the affidavit



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filed in support of this application, however, for the mistake committed by the counsel, the parties should not suffer and also for the lethargic attitude of the counsel, the Registry and also to some extent, the Court. If the present application is not allowed, the parties will lose their faith in this institution.

9. For the foregoing reasons, the delay is condoned and this application is allowed, subject to payment of costs of Rs.25,000/- (Rupees Twenty Five Thousand Only) by the applicant/first defendant to the respondents 1 and 2/plaintiffs, on or before 28.06.2024.

10. List the matter under the caption "for reporting compliance" on 01.07.2024.

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19.06.2024



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