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A.No.2254 of 2024
in
C.S. No.499 of 2018

A.No. 2254 of 2024
in
C.S.No. 499 of 2018

P.VELMURUGAN, J

This application has been filed to condone the delay of 1082 days in filing the written statement by the applicants/defendants in C.S.No.499 of 2018.

2. Mrs.Nalini Chidambaram, learned Senior Counsel appearing for the applicants/defendants submitted that earlier the applicants/defendants filed an application in A.No.4677 of 2019 for revoking the leave granted by this Court under Clause 12 of Letters Patent in A.No.5161 of 2018. This Court, by an order dated 14.11.2019, dismissed the said application and the same was upheld by the Division Bench of this Court by an order dated 25.03.2021 in O.S.A.No.86 of 2020. Due to pending litigation, the written statement in C.S.No.499 of 2018 could not be filed by the defendants within 120 days from the date of service of summons i.e., on



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18.08.2018. Pursuant thereto, the defendants filed the written statement on 02.09.2021, but the same was returned, since it was filed beyond 120 days. The learned Senior Counsel further submitted that when the present suit was listed along with C.S.No.378 of 2021, wherein the first applicant herein is the plaintiff on 18.10.2023, it came to the knowledge of the applicants/defendants that the written statement filed by the applicants/defendants in C.S.No.499 of 2018 was returned.

3. The learned Senior Counsel appearing for the applicants/defendants further submitted that non-filing of the written statement within the stipulated time was due to the pending litigation before this Court and the time spent in the above litigation will have to be condoned for the purpose of calculating the limitation in filing the written statement. She further submitted that being a Chartered High Court, this Court is having the power to condone the delay in filing the written statement, even if the same has been filed beyond the period of 120 days as prescribed in the Commercial Courts Act, 2015.



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4. It is seen from the records that the suit was filed on 06.04.2018 and the same was finally taken on file in the month of July 2018 and summons were served on the defendants on 18.08.2018. Thereafter, Vakalatnama on behalf of the defendants in the suit was filed on 11.09.2018. However, the defendants have filed the written statement on 02.09.2021 i.e., beyond the statutory period of 120 days. Though the defendants have already entered appearance through their counsel by way of filing Vakalatnama on 12.09.2018, the question of non service of summons on the defendants does not arise.

5. It is settled law as laid down by 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*** that 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 the maximum period of 120 days from the date of receipt of the suit summons. The relevant paragraph of the said judgment is paragraph No.8 which reads as follows:



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'8. The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 came into force on 23.10.2015 bringing in their wake certain amendments to the Code of Civil Procedure. In Order V, Rule 1, Sub-rule (1), for the second proviso, the following proviso was substituted:

"Provided further that where the Defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the Court, for reasons to be recorded in writing and on payment of such costs as the court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred and twenty days from the date of service of summons, the Defendant shall forfeit the right to file the written statement and the court shall not allow the written

statement to be taken on record."

Equally, in Order VIII Rule 1, a new proviso was substituted as follows:

"Provided that where the Defendant fails to file the written statement within the said period of



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thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the court, for reasons to be recorded in writing and on payment of such costs as the Court deems fit, but which shall not be later than one hundred and twenty days from the date of service of summons and on expiry of one hundred and twenty days from the date of service of summons, the Defendant shall forfeit the right to file the written statement and the court shall not allow the written statement to be taken on record."

This was re-emphasized by re-inserting yet another proviso in Order VIII Rule 10 Code of Civil Procedure, which reads as under:

"10. Procedure when party fails to present written statement called for by Court.- Where any party from whom a written statement is required Under Rule 1 or Rule 9 fails to present the same within the time permitted or fixed by the Court, as the case may be, the Court shall pronounce judgment against him, or make such order in relation to the suit as it thinks fit and on pronouncement of such judgment a decree shall be drawn up:

Provided further that no Court shall make an



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order to extend the time provided Under Rule 1 of this Order for filing of the written statement."

A perusal of these provisions would show that ordinarily a written statement is to be filed within a period of 30 days. However, grace period of a further 90 days is granted which the Court may employ for reasons to be recorded in writing and payment of such costs as it 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 shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record. This is further buttressed by the proviso in Order VIII Rule 10 also adding that the Court has no further power to extend the time beyond this period of 120 days.'

Therefore, even delay of 1 day beyond 120 days is not condonable, which is now a settled position of law as regards filing of written statement by defendants in Commercial Division.

6. In the present case, even though the defendants have filed the



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Vakalatnama on 11.09.2018, written statement could not be filed either within 30 days or within 120 days. Therefore, the defendants forfeited their right to file written statement.

7. Therefore, this Court is not inclined to condone the delay of 1082 days in filing the written statement and hence, this application fails and the same is dismissed.

8. The Registry is directed to return the written statement filed by the applicants/defendants.

22.04.2024

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