



A.No.2231 of 2024
in
C.S.No.(Comm Div).No.262 of 2023

P.VELMURUGAN, J.,

This application has been filed by the applicant/defendant to set aside the ex-parte order dated 08.04.2024 passed in C.S.(Comm Div) No.262 of 2023.

2. Though the learned counsel for the applicant /defendant submitted that suit summons was not physically served on him, he has filed the counter. Whereas, notice for the interlocutory application has been returned as unclaimed. Hence, the Court has recorded the service of notice as deemed service. Thereafter, learned counsel for the defendant undertook to file vakalat and then, he entered appearance on 24.11.2023 and the plaintiffs' counsel has also served all the typed set of papers on the learned counsel who appeared on behalf of the defendant on 25.11.2023. Hence, the time for filing the written statement starts on 25.11.2023. If at all the defendant had got any defence to file written statement, he ought to have filed the same within 30 days ie., on or before 24.12.2023 at any cost, and if he could not file the written statement within 30 days, he ought to have filed the same with the leave of the Court for condonation of delay in filing the written statement thereafter within 90 days. In this case, the defendant ought to have filed the written statement on or before



25.03.2024. Since the defendant has not filed his written statement within the statutory period of 120 days, the defendant has forfeited his right to take his defence. Hence, the petition is liable to be dismissed.

3. However, learned counsel for the applicant/defendant submitted that he was not aware of the proceedings, however, he came to know about the proceedings in the interlocutory application stage and then, he entered appearance. Hence, he could not file the written statement. But, the defendant was set ex-parte vide order of this Court dated 08.04.2024. Hence, he filed the application to set aside the ex-parte order. Even now, the suit summon has not been duly served on the defendant. Hence the question of filing of written statement could not arise.

4. However, learned counsel for the applicant/defendant has also submitted that at any cost, the Court finds that the applicant/defendant has forfeited his right to file the written statement and ex-parte order passed against the defendant may be set aside and opportunity may be given to cross examine the plaintiffs' side evidence, if the plaintiffs produce any oral evidence.

5. Heard and perused the materials available on records.



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6. Admittedly, the applicant/defendant was aware of the proceedings and hence, he entered appearance on 24.11.2023 itself. The learned counsel for the respondents/plaintiffs served all the papers on the applicant/defendant's counsel on 25.11.2023. Statutory mandate is that from the date of service of summon/knowledge of the case, as the case may be, the defendant has to file the written statement within 30 days. In this case, the defendant has not filed the written statement within 30 days. If he could not file the written statement within 30 days, he ought to have filed the same with the leave of the Court with condonation of delay petition in filing the written statement thereafter within 90 days. In this case, both the dates have been lapsed. Hence, the applicant/defendant has forfeited his right to file the written statement.

7. Insofar as, the present application to set aside the ex-parte order is concerned, though the defendant has forfeited his right to file the written statement, he is entitled to cross-examine the plaintiffs' witnesses.

8. In view of the above facts and circumstances, ex-parte order passed by this Court dated 08.04.2024 is set aside only for providing opportunity to the applicant/defendant to cross examine the plaintiffs' witnesses. For the above



limited purpose alone, this application is ordered.

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9. The plaintiffs' counsel has filed the proof affidavit of witnesses and case management schedule.

10. P.W.1 is directed to appear before the learned Master No.IV on 19.06.2024 for chief examination and marking of documents if any. The defendant's counsel is directed to cross-examine P.W.1 on 19.06.2024 and 20.06.2024 and the defendant's counsel is directed to complete his cross-examination of P.W.1 on or before 21.06.2024. If there is any deviation, the defendant will be forfeited his right to cross-examine the plaintiffs' witness.

11. List the matter on 25.06.2024.

05.06.2024

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