



A.No.4820 of 2022 in C.S(COMM DIV). No.14 of 2022

WEB COPY

A.No.4820 of 2022 in
C.S(COMM DIV). No.14 of 2022

P.VELMURUGAN. J.

This application is filed by the plaintiffs to reject the written statement along with the counter claim filed by the respondent/defendant in the above suit.

2. The case of the applicants/plaintiffs is that on filing of the present suit, they had taken out private notice to the respondent/defendant on 09.02.2022 and as per the track consignment of the Department of Posts, the private notice has been delivered to the respondent/defendant on 14.02.2022. The respondent/defendant first made appearance before this Court on 28.02.2022 and made an undertaking to file written statement. Thereafter, the respondent/defendant filed his written statement along with counter claim in the open Court on 11.04.2022, which is after expiry of the statutory period of 30 days. Since the counter claim shall be treated as a plaint and governed by, the Rules applicable to plaint as per Order VIII



A.No.4820 of 2022 in C.S(COMM DIV). No.14 of 2022

WEB COPY

Rule 6-A (4) of CPC, the written statement, along with the counter claim submitted by the respondent/defendant, is liable to be rejected, as it is barred by law as per the provisions of Order VII Rule 11(d) of CPC. Since the respondent/defendant has not filed the written statement and the counter claim within a period of 30 days as contemplated in the Commercial Courts Act, the Registry ought not to have received the same. Since the counter claim was not filed within the period stipulated in the Act itself and as they have not filed the counter claim with an application either to condone delay or extension of time to file the counter claim, the counter claim filed by the respondent/defendant is liable to be rejected.

3. The learned counsel for the applicants/plaintiffs submitted that though the private notice was delivered on 14.02.2022 and the respondent/defendant also made appearance on 28.02.2022, and as per the said Act, they ought to have filed the written statement within a period of 30 days from the date of service of summons, whereas, they filed the



A.No.4820 of 2022 in *C.S(COMM DIV). No.14 of 2022*

written statement along with the counter claim on 11.04.2022 without filing of any application to condone delay. However, this Court had not passed any order in writing stating the reason to accept the written statement and the counter claim. Since the counter claim and the written statement were not filed within the stipulated time of 30 days, the same are liable to be rejected. He further submitted that since the counter claim falls under the provisions of Order VII Rule 6-A(4) of CPC, the counter claim has to be treated as a plaint. Therefore, it has to be filed within the stipulated time, else it is barred by limitation. Therefore, the written statement has to be rejected and in the same way, the counter claim also should be rejected.

4. The learned Senior Counsel appearing for the respondent/defendant submitted that the Hon'ble Supreme Court in *Suo Motu Writ Petition(C) No.3 of 2020* dated 10.01.2022 has given exemption for the limitation. The limitation period starts only on 01.03.2022, whereas,



A.No.4820 of 2022 in C.S(COMM DIV). No.14 of 2022

the respondent/defendant filed the written statement along with the counter claim on 11.04.2022. The copy was also served on the counsel for the applicants/plaintiffs who has also made endorsement. The Court received the written statement along with the counter claim and has not passed any order for accepting the same in writing. At any cost, the Court has got the discretionary power to get the written statement after 30 days and within 120 days. Once the written statement is filed and received by the Court, it need not be treated within the rigor of Order VII Rule 11 CPC and it is not applicable to the written statement. Therefore, the application of the applicants/plaintiffs is liable to be dismissed.

5. Heard the learned counsel on either side and perused the materials available on record.

6. Admittedly, the applicants/plaintiffs filed the present suit in which, the summons were served on 09.02.2022. The exemption granted by the Hon'ble Supreme Court for limitation due to Covid-19 is upto



A.No.4820 of 2022 in C.S(COMM DIV). No.14 of 2022

28.02.2022 and the limitation starts from 01.03.2022. The respondent/defendant ought to have filed the written statement along with counter claim within 30 days i.e. on or before 31.03.2022. However, the respondent/defendant has filed the written statement along with counter claim only on 11.04.2022, which is beyond the period of 30 days. The copy was also served on the applicants/plaintiffs and the learned counsel for the applicants/plaintiffs also received the written statement and counter claim and without any objection, they have simply made endorsement on 11.04.2022. In the endorsement made in the written statement by the respondent/defendant on 13.04.2022, he has referred to the order passed by the Hon'ble Supreme Court in W.P.No.3 of 2020.

7. As per the above Writ Petition, exemption for limitation is only upto 28.02.2022 and not beyond that period. Be that as it may, the written statement and the counter claim were not filed within 30 days. However, the same have been filed within 120 days as per Order VIII Rule 1 C.P.C.



which reads as follows;

***"ORDER VIII: Written Statement, Set-Off
and Counter Claim;***

Rule 1- Written Statement.—The Defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence: Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons"

8. In this case, the written statement was not filed within 30 days.

However, the same was filed within 120 days. Though there is no application, the Court also received it and applicants/plaintiffs also had not made any objection. Once the Court accepted, though reason not given, the respondent/defendant ought to have challenged the same before the



A.No.4820 of 2022 in C.S(COMM DIV). No.14 of 2022

appellate authority and this Court cannot sit in the arm chair of the appellate Bench and set aside its own order.

9. Admittedly, in this case, the applicants/plaintiffs have not filled any application to review the order of this Court. Once the Act permits to file written statement within 120 days and if the defendant filed the written statement beyond 30 days, he has to give reason in writing for non-filing of the written statement within the stipulated time, which means he has to file an application either to condone delay or extension of time.

10. However, for one reason or other the Registry by over sight, has received the written statement and the Court also recorded the same and directed to file affidavit of admission or denial. Now the applicants/plaintiffs have filed the present application to reject the written statement along with the counter claim.

11. Since the respondent/defendant has filed the written statement along with the counter claim within 120 days and the Court also received



A.No.4820 of 2022 in C.S(COMM DIV). No.14 of 2022

the same, there is no ground to reject the written statement and the counter claim. Because of the error committed by the counsel and Registry and Court, the parties should not suffer. Therefore, the application is liable to be dismissed.

12. Considering the pecuniary nature and error committed by the Registry and the Court and further the applicants/plaintiffs have also simply received the written statement without raising any objection and therefore, this Court dismisses the application.

13. It is made clear that this order may not be a precedent for any other matter. This finding is applicable to the present case alone.

14. List the suit for hearing on 11.06.2024.

02.04.2024
(2/2)

Ksa-2



WEB COPY



A.No.4820 of 2022 in *C.S(COMM DIV). No.14 of 2022*

P.VELMURUGAN. J.

ksa-2

A.No.4820 of 2022 in
C.S(COMM DIV). No.14 of 2022

02.04.2024

(2/2)