



A. Nos.5384 & 5385 of 2023 and C.S. DR.No.34048 of 2020

ABDUL QUDDHOSE,J.

The plaintiff has challenged the order of the learned Master dated 31.08.2023 rejecting the applications filed by the plaintiff seeking to condone the delay of 423 days in payment of the deficit court fee and to condone the delay of 423 days in re-presenting the plaint in C.S.D. No.34048 of 2020.

2.At the outset, the learned counsel for the plaintiff, on instructions would submit that he is not pressing for the condone delay application filed to condone the delay in payment of the deficit Court fees.

3.Insofar as A.No.5385 of 2023, which has been filed aggrieved by the learned Master dismissing the application filed by the plaintiff seeking to condone the delay of 423 days in re-presenting the plaint in C.S.D34048 of 2020, is concerned, the learned counsel for the plaintiff would submit that despite sufficient reasons having been given by the plaintiff, the learned Master has erroneously dismissed the application. He would submit that the suit was filed on 12.03.2020 before this Court, which was returned by the registry on 18.03.2020. Thereafter, it was re-presented on 27.07.2022, which was once again returned by the registry on 29.09.2022. Therefore, the plaintiff once again re-presented the



plaint on 31.07.2023. He would also submit that after the plaint was returned by the registry at the first instance, the plaintiff had filed an application under Section 9 of the Bankruptcy and Insolvency Code, 2016 before the National Company Law Tribunal, Chennai against the very same defendant. Thereafter, the plaintiff contends that the said application filed before the National Company Law Tribunal, Chennai was withdrawn by the plaintiff on 22.03.2022. Only thereafter the plaint, which was returned by the registry, was re-presented before this Court. Since sufficient cause has been shown for condoning the delay, according to the learned counsel for the plaintiff, the application seeking to condone the delay in re-presentation ought to have been allowed by the learned Master. He would also submit that with regard to the limitation issues, it is for the registry to scrutinize the plaint. Therefore, without giving proper reason and without appreciating the facts of the case and the date when the cause of action arose, the learned Master has erroneously dismissed the application on the ground that the suit is barred by limitation.

4. On the other hand, the learned counsel for the defendant would submit that the affidavit filed by the plaintiff seeking to condone the delay in re-presentation is a false affidavit. Simultaneously, the plaintiff has approached both this Court as well as the National Company Law Tribunal, Chennai, which



5. As seen from the impugned order, the nature of the suit transaction and the date when the cause of action arose for filing the suit are not disclosed in the impugned order. However, without disclosing the same and without even ordering notice to the defendant, the learned Master has dismissed the application filed by the plaintiff seeking to condone the delay in re-presentation of the plaint on the ground of limitation and also on the ground that sufficient cause has not been shown by the plaintiff for condoning the delay. Such an order cannot be passed without any basis. Without even disclosing the nature of the suit transaction, the learned Master ought not to have dismissed the suit on the ground of limitation. The plaintiff has filed the application only seeking to condone the delay in re-presentation of the plaint. The learned Master ought to have seen only whether sufficient cause was shown by the plaintiff for condoning the delay. Even if the learned Master wants to dismiss the suit on the ground of limitation, he should have appreciated the facts of the dispute by disclosing the details of the dispute and the date when the cause of action arose. But unfortunately, the impugned order does not disclose the same. The plaintiff has also given sufficient reasons



for not re-presenting the plaint on time. The plaintiff has filed the suit before this Court on 27.02.2020, which was returned by the registry. Thereafter, he has approached the National Company Law Tribunal, Chennai for filing an application under Section 9 of the Bankruptcy and Insolvency Code, 2016 against the very same defendant on the very same cause of action. The application filed before the National Company Law Tribunal was also withdrawn by the plaintiff and an order to that effect was passed by the National Company Law Tribunal, Chennai on 22.03.2022. In the meanwhile, between 12.03.2020 and 22.03.2022, the plaint presented before this Court was returned by the registry and the plaintiff had also re-presented the same and thereafter, once again it was returned by the registry.

6.Learned counsel for the respondent would vehemently oppose these applications filed by the plaintiff on the ground that the suit is barred by limitation on the ground that the affidavit filed by the applicant is bereft of particulars and the affidavit filed by the plaintiff is a false affidavit, which will amount to perjury. All these contentions can be raised only after the suit is numbered and not at this stage. At this stage, the only consideration is whether sufficient cause has been shown by the plaintiff for condoning the delay in re-presentation of the plaint or not. If at all the defendant has any objection with regard to the maintainability of



the suit, they can raise the same after the suit gets numbered. Therefore, this Court is of the considered view that the reasons given by the learned Master for passing the impugned order is erroneous and it has to be set aside as sufficient cause has been shown by the plaintiff for condoning the delay and re-presentation of the plaint.

7. Accordingly, A.No.5385 of 2023 is allowed as prayed for by setting aside the order of the learned Master dated 31.08.2023 passed in A.No.4227 of 2023. A.No.5384 of 2023 is dismissed as not pressed.

vga

16.02.2024



WEB COPY



A. Nos.5384 & 5385 of 2023 and C.S. DR. No.34048

ABDUL QUDDHOSE,J.

vga

A. Nos.5384 & 5385 of 2023 and C.S. DR.No.34048 of 2020

16.02.2024