



WEB COPY



Application No.6037 of 2023 in C.S.(Comm.Div.)No.153 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19.02.2024

Pronounced on : 23.02.2024

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

Application No.6037 of 2023 in C.S.(Comm.Div.)No.153 of 2023

ITC Ltd.
West Bengal.

.. Applicant/defendant

vs.

Britannia Industries Limited,
represented by its Authorised Representative
Ravichandran Rajagopal

.. Respondent/plaintiff

For Applicant : Mr.Arun C.Mohan

For Respondent : Mr.M.S.Bharath

ORDER

The primary issue that arises for consideration in this application is whether for the purpose of calculating the limitation period for filing the written statement in a commercial suit, the actual date of the service of the suit summons as per the form prescribed under the Madras High Court Original Side Rules should be the starting date or the starting date



Application No.6037 of 2023 in C.S.(Comm.Div.)No.153 of 2023

should be from the date of receipt of the private notice by the defendant or defendant's counsel from the plaintiff or plaintiff's counsel informing about the filing of the suit by the plaintiff against the defendant.

2.It is settled law that beyond the maximum period of 120 days, time cannot be extended by the Commercial Division of this Court for filing the written statement.

3.The present application has been filed by the defendant seeking to condone the delay of 88 days in filing the written statement and the defendant has calculated limitation for the purpose of filing the written statement from the date when the defendant was actually served with the suit summons as per the form prescribed under the Original Side Rules.

4.According to the defendant, since they received the suit summons only on 04.07.2023 though they have entered appearance in the Interlocutory Applications filed by the plaintiff, the present application seeking to condone the delay of 88 days in filing the written statement is maintainable as the same has been filed on 30.10.2023 along with the



Application No.6037 of 2023 in C.S.(Comm.Div.)No.153 of 2023

written statement though the statutory 120 days period from the date of receipt of the suit summons lapses only on 01.11.2023 as per Order V Rule 1 of the Original Side Rules. The defendant also contends that due to the hotly contested matter insofar as the Interlocutory Applications filed by the plaintiff, which went upto the Hon'ble Supreme Court, where the matter is now pending, they did not file the written statement on time as they had to retrieve certain documents to put it in the form of pleadings in their written statement. According to them, the delay is neither wilful nor wanton and sufficient cause has been shown by them for not filing the written statement on time.

5.On the other hand, it is the contention of the plaintiff as seen from their counter affidavit that the period of limitation for filing the written statement will have to be calculated from the date when the defendant's counsel was served with the suit papers. According to them, having had the knowledge about the suit as early as on 21.06.2023 itself and having been served with the pleadings and documents filed by the plaintiff on the very same day through e-mail sent by the plaintiff's counsel, the defendant ought to have filed the written statement within



Application No.6037 of 2023 in C.S.(Comm.Div.)No.153 of 2023

the maximum period of 120 days from 21.06.2023. But having filed the written statement only on 30.10.2023 beyond the period of 120 days, the present application is not maintainable and the defendant's right to file the written statement stands forfeited. The plaintiff also contends that since the plaintiff's counsel has served the suit papers to the defendant's counsel on 21.06.2023 itself, the defendant cannot now plead that the limitation period for the purpose of filing the written statement will have to be calculated only from 04.07.2023 when the suit summons was served on the defendant as per the form prescribed under the Original Side Rules. According to him, even as per the Original Side Rules, the suit summons can be served on the defendant either as per the prescribed form or with variations. According to the plaintiff, since the defendant was served with the suit papers on 21.06.2023 itself through a Communication sent by the plaintiff's counsel and the defendant has also contested the Interlocutory Applications filed by the plaintiff, the present application filed by the defendant to condone the delay of 88 days in filing the written statement is not maintainable since the written statement has been filed beyond the maximum statutory period of 120 days from 21.06.2023 when the suit papers were served.



Application No.6037 of 2023 in C.S.(Comm.Div.)No.153 of 2023

6.Learned counsel for the respondent/plaintiff would reiterate the contentions of the respondent/plaintiff as found in its counter affidavit filed in this application. In support of the respondent's/plaintiff's contention, the learned counsel for the respondent/plaintiff drew the attention of this Court to the following authorities:

a)Siraj Ahmad Siddiqui vs. Prem Nath Kapoor reported in 1993 (4) SCC 406, with particular reference to paragraph No.14 of the said decision;

b)Flight Center Travels Pvt. Ltd. vs. Flight Centre Limited and another reported in 2013 SCC Online Del 331, with particular reference to paragraph No.24 of the said decision;

c)Sunil Poddar and others vs. Union Bank of India reported in 2008 2 SCC 326, with particular reference to paragraph No.24 of the said decision;

d)SCG Contracts (India) Private Limited vs. K.S.Chamankar Infrastructure Private Limited and others, with particular reference to paragraph No.14 of the said decision;



Application No.6037 of 2023 in C.S.(Comm.Div.)No.153 of 2023

7.Relying upon the aforesaid decisions, the learned counsel for the respondent/plaintiff would submit that since the suit papers were served by the plaintiff's counsel on the defendant's counsel on 21.06.2023 itself, the period of limitation for the purpose of calculating the limitation period for filing the written statement will commence from 21.06.2023 and not from 04.07.2023 when the actual suit summons as per the form prescribed under the Original Side Rules was served on the defendant. Since the 120 days period for filing the written statement is not extendable as laid down by the Hon'ble Supreme Court in **SCG Contracts** case, referred to supra and the said 120 days period having come to an end, the present application is not maintainable as admittedly the written statement was filed by the defendant only on 30.10.2023 beyond the 120 days period.

8.On the other hand, the applicant/defendant relies upon Order V Rule 1, Order VIII Rule 1 and Order VIII Rule 10 C.P.C. as applicable to the Commercial Courts Act, 2015. According to them, as per the aforesaid provisions a)the defendant is under an obligation to file the written statement of his defence within 30 days of service of summons;



Application No.6037 of 2023 in C.S.(Comm.Div.)No.153 of 2023

b)if he fails to file the written statement within the said period of 30 days, he is allowed to file the written statement on such other day as the Court may specify for reasons to be recorded in writing and on payment of such costs as the Court may impose but the other day, in any case, cannot go beyond 120 days from the date of service of summons; c)on expiry of 120th day from the date of service of summons, the defendant forfeits the right to file the written statement and no Court can make an order to extend such time beyond 120 days from the date of service of summons.

9.In support of his contentions that for calculating the limitation for the purpose of filing the written statement, the period has to be calculated from the date of receipt of the suit summons by the defendant and not from the date of service of notice in the Interlocutory Applications filed by the plaintiff, the learned counsel for the applicant/ defendant drew the attention of this Court to the following authorities:

a)SCG Contracts India Pvt. Ltd. vs. K.S.Chamankar Infrastructure Pvt. Ltd. reported in 2019 12 SCC 210;



Application No.6037 of 2023 in C.S.(Comm.Div.)No.153 of 2023

b)Prakash Corporation vs. Dee Vee Projects Limited 2022 5 SCC

112.

c)Axis Bank Limited vs. Mira Gehani and others reported 2019
SCC Online Bombay;

d)Machine Tools Aids India vs. M/s.GNC Infra LLP and another
reported in 2023 in HCC Delhi 65;

e)Red Bull AG vs. Pepsico India Holdings Pvt. Ltd. and another
reported in 2019 SCC Online Delhi 9901;

f)Tardeo Properties Pvt. Ltd. vs. Bank of Baroda reported in 2007
SCC Online Bom 614.

Discussion:

10.The purpose for serving the suit summons on the defendant is to provide information to the defendant about the institution of the suit by the plaintiff and for appearance of the defendant before the Court. A typical summons will contain the following particulars:

a)Purpose for service of summons;

b)The date on which the defendant is to appear before the court;

c)A copy of the plaint filed by the plaintiff;



Application No.6037 of 2023 in C.S.(Comm.Div.)No.153 of 2023

d)The signature of the judge or his appointed officer and the seal
of the Court;

e)Any other appropriate directions which are deemed necessary by
the Court.

11.Order IV Rule 7 of the Madras High Court Original Side Rules, which deals with form of summons and time for service, makes it clear that the summons to the defendant shall be in Form No.13 in Appendix II, with such variations as the circumstances may require. Order IV Rule 7(3) of the Madras High Court Original Side Rules also clarifies that where an Advocate has entered appearance in an interlocutory proceeding, service of summons in the suit may be made on the Advocate on behalf of the party. Order IV Rule 7 of the Madras High Court Original Side Rules is reproduced hereunder:

'7.(1)The summons shall be in Form No.13 in Appendix II, with such variations as the circumstances may require.

(2)The summons shall be served within fourteen days from the date thereof in the case of the proceedings other than proceedings under Order VII and within seven days from the date thereof when the proceedings are under Order



VII, or in the case of a defendant to be served outside the city of Madras within such time, as the Registrar may fix and endorse thereon.

(3)Notwithstanding anything contained in Order V of the Code for the service of summons, where an Advocate has entered appearance in an interlocutory proceeding, service of summons in the suit may be made on the advocate on behalf of the party.'

Therefore, as seen from Order IV Rule 7 of the Original Side Rules, it is clear that the plaintiff can either serve the suit summons as per Form No.13 in Appendix II on the defendant directly or to the defendant's Advocate, who has entered appearance in the interlocutory applications filed by the plaintiff.

12.Order V Rule 1 of the Madras High Court Original Side Rules also makes it clear that the limitation period for filing the written statement by the defendant starts from the date of receipt of the suit summons by the defendant. Order V Rule 1 of the Madras High Court Original Side Rules is reproduced hereunder:

'1.If the defendant intends to defend the suit, he shall, within the period limited by the summons served on him, file in Court a written statement setting out the grounds of his



defence in the form prescribed by the Code and also stating his address for service: Provided that a defendant may file his written statement within a further period of five days, if the plaintiff or his advocate consents and signifies such consent by endorsement on the written statement. The costs of obtaining and granting consent shall be costs in the cause. The defendant shall, within the said period, give notice to the plaintiff that he has filed a written statement and of his address for service.'

13.Learned counsel for the respondent/plaintiff relies upon the email dated 21.06.2023 sent by the respondent's/plaintiff's counsel to the counsel for the applicant/defendant enclosing the plaint, common affidavit, judges summons and documents filed along with the plaint. According to him, the service of the plaint, common affidavit, judges summons and the documents on the applicant's/defendant's counsel by the respondent's/plaintiff's counsel privately through email on 21.06.2023 will be the date from which the limitation period for the purpose of filing of the written statement by the defendant will have to be calculated.



Application No.6037 of 2023 in C.S.(Comm.Div.)No.153 of 2023

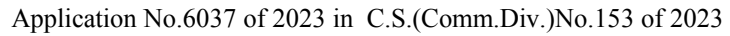
14. Form No.13 in Appendix II of the Madras High Court Original Side Rules, which is the specified format of the suit summons as prescribed under Order IV Rule 7(1) of the Madras High Court Original Side Rules is reproduced hereunder:

Form No.13
ORDER IV, RULE 5 - SUMMONS TO
APPEAR AND ANSWER
IN THE HIGH COURT OF JUDICATURE AT MADRAS
Ordinary Original Civil Jurisdiction
Suit No. of 19....

To

Defendants

Whereas, on theday of.....19.....the above named plaintiff instituted a suit in our said Court against you by presenting a plaint, whereby claim the relief whereof the short particulars are endorsed hereon (or annexed hereto), you are hereby summoned to appear before the Court at the hour of (10.30) O'clock in the forenoon of the day..... after service of this summons upon you, in person or by Advocate, to answer the plaintiff's claim and to bring with you any documents in your possession or power relating to the merits of the plaintiff's case, or upon which you intend to rely in support of your defence and take notice that in default of



And also take notice that, if you intend to defend the suit, you must cause an appearance to be entered on your behalf and file in Court a written statement stating the grounds of your defence within (30) days after service of this summons upon you in which case the suit will be entered in the general list of causes.

And also take notice that leave to institute this suit in this Court was granted by order dated the.....day of.....and that you are at liberty to apply to this Court to stay the said proceedings.

15.As seen from the aforesaid prescribed form, the defendant is provided with all the information a typical summons will contain as disclosed in the opening paragraph of the discussion. Order IV Rule 7(3) of the Madras High Court Original Side Rules gives an option for the plaintiff to serve the suit summons on the Advocate for the defendant, who has entered appearance in an interlocutory proceeding in the suit. Though an option has been given to the plaintiff to serve the suit summons on the Advocate, who has entered appearance on behalf of the defendant in an interlocutory proceeding, it does not entitle the plaintiff



Application No.6037 of 2023 in C.S.(Comm.Div.)No.153 of 2023

to serve the summons in any form, that too without the necessary particulars, which a typical summons will contain, namely, a)purpose for service of summons; b)date on which the defendant is to appear before the Court; c)a copy of the plaint filed by the plaintiff; d)the signature of the judge or his appointed officer and the seal of the court; and e)any other appropriate directions which are deemed necessary by the Court.

16.Only to satisfy the aforementioned requirements, the Madras High Court Original Side Rules has prescribed a specific form, i.e. Form No.13 in which format any suit summons will have to be served on the defendant. It also contains all the necessary requirements, which a typical summons will contain.

17.In the case on hand, admittedly, the respondent's/plaintiff's counsel has not served the suit summons on the applicant's/defendant's counsel as per Form 13 of the Madras High Court Original Side Rules on 21.06.2023, but instead has served the plaint, affidavit, judges summons and the documents filed along with the plaint through email dated 21.06.2023. The email dated 21.06.2023 sent by the



Application No.6037 of 2023 in C.S.(Comm.Div.)No.153 of 2023

respondent's/plaintiff's counsel to the applicant's/defendant's counsel is

reproduced hereunder:

From: Bharath M.S. <bharath@kria.law>

Sent: Wednesday, June 21, 2023 3:32 PM

To: ArunMohan <acm@mohanlaw.in>; Karthik

S <karthik@mohanlaw.in>; Venkatesh Krish <kv@mohanlaw.in>

Cc: Reshma Rajagopal <reshma@kria.law>; Akshaya P Sachin

<akshaya@kria.law>; Ram Kumar Natarajan <ram@kria.law>

Subject: MHC - CS 153 of 2023 - Britannia Vs. ITC Ltd.

Dear Arun

The plaint and typed set of documents in the captioned matter can be

accessed from the following links:

Document	Access Link
Plaint	Plaint & Statement of Truth
Common Affidavit and Judges Summons	Affidavits and Judges Summons
Documents	Documents

We are serving copies of all pleadings and typed set of documents as directed by this Court on you.

Do confirm safe receipt of this mail and accompanying documents.

18. Neither the email dated 21.06.2023, which was reproduced supra satisfies the requirements of a typical suit summons nor is it in accordance with the Form No.13 of the Madras High Court Original Side



Application No.6037 of 2023 in C.S.(Comm.Div.)No.153 of 2023

Rules, which is the prescribed format of the suit summons for service on the defendant or its Advocate. The email dated 21.06.2023 of the respondent's/plaintiff's counsel to the applicant's/ defendant's counsel does not disclose the following:

- a) purpose for service of summons;
- b) date on which the defendant is to appear before the Court;
- c) a copy of the plaint filed by the plaintiff;
- d) the signature of the judge or his appointed officer and the seal of the court.

19. In Form No.13 of the Madras High Court Original Side Rules, which has been extracted supra, all the aforementioned particulars are given, which a typical summons will contain. Though Order IV Rule 7(1) of the Original Side Rules provides that the summon shall be in Form No.13 in Appendix II, with such variations as the circumstances may require, it cannot be said that email dated 21.06.2023 sent by the respondent's/plaintiff's counsel to the applicant's/defendant's counsel will amount to service of suit summons on the defendant. The said email is neither Form No.13 in Appendix II of the Madras High Court Original



Application No.6037 of 2023 in C.S.(Comm.Div.)No.153 of 2023

Side Rules nor the contents of the same can be construed to satisfy the requirements of Order IV Rule 7(1) of the Original Side Rules, which would stipulate that the summons shall be in Form No.13 in Appendix II, with such variations as the circumstances may require.

20.In the email dated 21.06.2023 sent by the respondent's/plaintiff's counsel through the applicant's/defendant's counsel, the respondent's/plaintiff's counsel attaches the suit papers, which includes plaint, affidavit, judges summons and documents. However, it does not contain the particulars of the suit claim and the signature of the authorised officer of the court as well as the seal of the Court. Therefore, this Court is of the considered view that the suit summons cannot be deemed to be served on the defendant on 21.06.2023.

21.Admittedly, the suit summons as per Form.No.13 was served on the defendant only on 04.07.2023. Therefore, the period of limitation for filing the written statement will have to be calculated only from that date and not from 21.06.2023 when the counsel for the respondent/plaintiff has calculated. If the period of limitation for filing the written statement



Application No.6037 of 2023 in C.S.(Comm.Div.)No.153 of 2023

by the defendant is calculated from 04.07.2023, when the suit summons was served in accordance with Order IV Rule 7 of the Original Side Rules, the maximum statutory time from the date of receipt of the suit summons available to the defendant to file the written statement expires only on 03.11.2023 and not on 20.10.2023. As the respondent/plaintiff has erroneously calculated the limitation period from 21.06.2023 instead of 04.07.2023 when the suit summons as per the prescribed form was actually served on the defendant, the delay in filing the written statement is only 88 days which is condonable.

22.Admittedly, the instant suit has been hotly contested by the defendant in the interlocutory applications filed by the plaintiff. The orders passed in the interlocutory applications were also challenged before the Division Bench of this Court through Original Side Appeals. The orders of the Division Bench has also been challenged before the Hon'ble Supreme Court.

23.The applicant/defendant has stated in the affidavit filed in support of this application that only due to the fact that the respondent/



Application No.6037 of 2023 in C.S.(Comm.Div.)No.153 of 2023

plaintiff had filed voluminous documents along with the plaint, there was a delay in filing the written statement as the said documents had to be thoroughly perused. Additionally, they have also stated that the arguments in the interlocutory applications were happening and certain vital documents imperative for effectively defending the suit were traced out only recently and the written statement was prepared and filed immediately thereafter. According to the applicant/defendant, only on account of the aforesaid said reasons, there was a delay of 88 days in filing the written statement. Though the respondent/plaintiff has disputed the contentions of the applicant/defendant, they have not been able to convince this Court that the reasons given by the applicant/defendant for condoning the delay is unsatisfactory.

24.Considering the fact that admittedly, the interlocutory applications were hotly contested by both the parties and the decision rendered in the interlocutory applications is now pending consideration by the Hon'ble Supreme Court, the respondent/plaintiff having filed the voluminous documents, necessarily sufficient time will have to be given to the applicant/defendant to file the written statement. The reasons given



Application No.6037 of 2023 in C.S.(Comm.Div.)No.153 of 2023

in the affidavit filed in support of this application by the applicant/defendant for not filing the written statement on time will reveal that sufficient cause has been shown by the applicant/defendant for condoning the delay of 88 days in filing the written statement. The delay of 88 days has been rightly calculated from 04.07.2023 when the suit summons as per Form No.13 was served on the defendant.

25.The judgements relied upon by the learned counsel for the respondent/plaintiff does not have any bearing for the facts of the instant case.

a) In **Siraj Ahmad Siddiqui vs Prem Nath Kapoor reported in (1993) 4 SCC 406**, the Hon'ble Supreme Court has held that if the defendant appears before the court after the registration of the suit and he is informed about the nature of the claim and the date fixed for reply thereto, the defendant must be deemed to have waived the right to the summons served on him.

In the instant case, in the communication dated 21.06.2023, the learned counsel for the respondent/plaintiff has not satisfied the requirements of a typical suit summons, which will include the nature of



Application No.6037 of 2023 in C.S.(Comm.Div.)No.153 of 2023

the claim and the date of hearing of the suit. Having not satisfied the requirements of a typical suit summons, the question of deemed waiver of the right to receive the summons as in the case of **Siraj Ahmad Siddiqui vs Prem Nath Kapoor**, referred to supra, will not arise.

b)In **Flight Center Travels Pvt. Ltd. vs. Flight Centre Limited** and another reported in 2013 SCC Online Del 331, it was held that if a defendant having advanced knowledge of the summons enters appearance through counsel and accepts notice in Court, it would amount to waiver of the right to have summons served on the defendant.

However, in the instant case, the defendant never had any knowledge about the suit summons as per the Form No.13 in Appendix II of the Madras High Court Original Side Rules was attempted to be served on them nor was attempt made by the plaintiff's counsel to serve as per the prescribed format on 21.06.2023. Therefore, the aforesaid decision has no bearing for the facts of the instant case.

c)In **Sunil Poddar and others vs. Union Bank of India** reported in (2008) 2 SCC 326, the Hon'ble Supreme Court has once again held



Application No.6037 of 2023 in C.S.(Comm.Div.)No.153 of 2023

that if a defendant having advanced knowledge of the summons enters appearance through counsel and accepts notice in Court, it would amount to deemed service of suit summons.

However, as stated earlier, while analysing **Flight Center Travels Pvt. Ltd. vs. Flight Centre Limited**, referred to supra, the applicant/defendant having no knowledge about the service of suit summons as per the prescribed form on the defendant, the question of deemed waiver of the right to receive the suit summons as per the Madras High Court Original Side Rules does not arise.

26. Admittedly, since the written statement has been filed by the defendant on 30.10.2023, which is within the 120 days period from the date of receipt of the suit summons, i.e. from 04.07.2023, necessarily, the written statement will have to be received by this Court as it is in accordance with the judgment of the Hon'ble Supreme Court in the case of SCG Contracts (India) Private Limited vs. K.S.Chamankar Infrastructure Private Limited, which makes it clear that 120 days period for filing of the written statement is not extendable.



Application No.6037 of 2023 in C.S.(Comm.Div.)No.153 of 2023

27.For the forgoing reasons, this application has to be allowed as sufficient cause has been shown by the applicant/defendant for condoning the delay of 88 days in filing the written statement.

28.Accordingly, this application is allowed as prayed for and the written statement filed by the defendant is taken on record.

29.Post the suit for filing of affidavit of admission/denial of documents on 11.03.2024.

23.02.2024

Index: Yes/ No
Speaking order / Non speaking order
Neutral citation : Yes / No
vga



WEB COPY



Application No.6037 of 2023 in C.S.(Comm.Div.)No.153 of 2023

ABDUL QUDDHOSE, J.
vga

**pre-delivery order in
Application No.6037 of 2023 in
C.S.(Comm.Div.)No.153 of 2023**

23.02.2024