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A. No.6586 of 2023

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in
C.S. No.499 of 2018

ABDUL QUDDHOSE, J.

This application has been filed seeking to set aside the exparte order dated 18.10.2023. The defendants have been set exparte by this Court on 18.10.2023.

2. The learned counsel for the respondent / plaintiff has stated no objection for allowing this application. However, he would submit that in case the applicants / defendants file their written statement, the said written statement cannot be taken on record by this Court since the same would have been filed beyond the statutory period of 120 days from the date of receipt of the suit summons. He would therefore submit that as and when the application filed by the applicants / defendants seeking to condone the delay in filing the written statement is numbered and brought before this Court, the plaintiff may be granted liberty to raise all objections with regard to receipt of the written statement by this Court.



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3. 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. in Civil Appeal No.1638 of 2019 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.

4. However, the learned Senior Counsel appearing for the

applicants / defendants would rely upon a judgement of the Hon'ble

Supreme Court in ***Iridium India Telecom Ltd., vs. Motorola Inc.***

reported in 2005 2 SCC 145 and would submit 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.

5. The Commercial Courts Act came into place only in the year

2015. When the decision in Iridium India Telecom Ltd., case relied

upon by the learned Senior Counsel was rendered by the Hon'ble

Supreme Court, The Commercial Courts Act, 2015 was not in place.



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Being a special law and that too when the issue has been settled by the

WEB CO Hon'ble Supreme Court in *M/s.SCG Contracts case* rendered by the

Hon'ble Supreme Court, the question of condoning the delay beyond the period of 120 days in filing the written statement will not arise. Any way

since the condone delay application is not yet numbered and is not before this Court, this Court is not deciding that issue now. The present application has been filed only to set aside the exparte order. This

Court is satisfied with the reasons stated in the affidavit filed in support of this application and after recording the no objection stated by the learned counsel for the respondent / plaintiff is allowing this application.

Accordingly, this application is allowed as prayed for.

Post the matter on **14.02.2024**.

01.02.2024

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