



IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 02.06.2025

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THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

A.No.1619 of 2025
in
C.S.(Comm Div) No.44 of 2025

M/s.Seapol Port Private Limited
Having its registered office at
1st Floor, No.42/85,
Dheen Estate, Moore Street, Parrys,
Chennai-600 001,
Also having brach office at
Ground Floor, Door No.11-2-15,
Archana Building, Eilderness Drive,
Daspalla Hills, Daspalla,
Vishakhapatnam-530 003, Andhra Pradesh
Represented by through its Authorised Signatory
Mr.M.K.Shajahan

... Applicant

-VS-

M/s.Cred Avenue Private Limited,
Having its registered office at
12th floor, Prestige Polygon,
No.47 1, Annasalai, nandanam,
Chennai-600 035,
Represented by its Authorised Signatory
Mr.Adithya Murali

... Respondent



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Prayer: Judge's summons filed under Order XIV Rule 8 of the Madras High Court Original Side Rules 1956 read with under Section 5 of the Limitation Act prayed to condone the delay of 10 days in filing the Leave to Defend Application of the Applicant/Defendant.

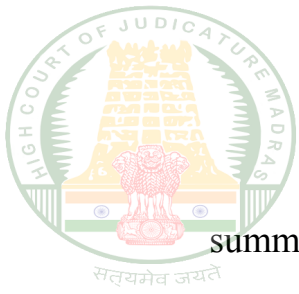
For Applicant : Mr. Arun C Mohan
for M/s.Abhishek Singh

For Respondent : Mr.P.Giridharan

ORDER

By this application, the defendant seeks the condonation of delay of 10 days in filing the leave to defend application.

2. Summons in Form 13-B was served on the defendant on 21.02.2025 calling upon the defendant to obtain leave to defend on or before 25.02.2025. Upon receipt thereof, the defendant served notice of appearance under Order XXXVII Rule 3 of the Code of Civil Procedure, 1908 (the CPC) on the plaintiff by email. Learned counsel for the plaintiff served the plaint and suit documents on learned counsel for the defendant on 26.02.2025 after receiving the notice of appearance. Thereafter, the



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summons for judgment was served on the defendant on 28.02.2025 and the

defendant filed the leave to defend application on 13.03.2025.

3. Learned counsel for the defendant submits that the defendant is entitled to file the leave to defend application after receiving the summons for judgment. He also submits that the application has been filed both under the relevant provisions of the Original Side Rules and the CPC. Consequently, he submits that the defendant is entitled to rely on the relevant provisions of the CPC, including Order XXXVII Rule 3(7).

4. Learned counsel for the plaintiff responded to these contentions by contending that Order VII of the Original Side Rules would prevail over Order XXXVII of the CPC to the extent of inconsistency. He also submits that the procedure for filing notice of appearance, which is prescribed in Order XXXVII Rule 3(4), is not applicable to summary suits filed on the Original Side of this Court. Since Order VII does not provide for enlargement of the time prescribed for filing the leave to defend application, learned counsel contends that the delay in filing the leave to defend

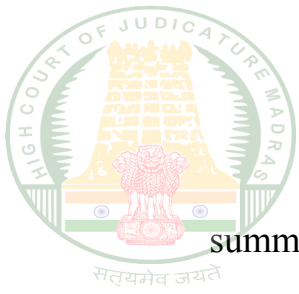


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application cannot be condoned. In this regard, he also points out that Rule 5 of Order VII provides for the grant of decree in case of default by the defendant in obtaining leave within 10 days.

5. In support of the contention that the provisions of the relevant Original Side Rules would prevail over the CPC, learned counsel relied on the judgment of the Hon'ble Supreme Court in *Iridium India Telecom Ltd. v. Motorola Inc. (2005) 2 SCC 145*, particularly paragraph 39 thereof.

6. In the case at hand, summons was issued to the defendant purportedly in Form 13-B. The summons issued to the defendant does not prescribe the number of days within which the leave to defend application should be filed. Instead, in deviation from the format prescribed in Form 13-B, it directs the defendant to obtain leave within 25.02.2025. Therefore, it appears that the summons is not in compliance with Order VII. In fact, the time permitted to the defendant is less than 10 days, if reckoned from 19.02.2025, which is the date on which the summons was signed. In addition, the plaintiff has proceeded to serve the plaint, suit documents and



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summons for judgment on the defendant upon receipt of notice of appearance.

7. As contended by learned counsel for the plaintiff, unlike Order XXXVII Rule 3(7) of the CPC, Order VII of the Original Side Rules does not contain a provision for enlargement of time. It should, however, be noticed that it does not contain any provision precluding enlargement. Under Order I Rule 7 of the Original Side Rules, the Court is empowered to enlarge or abridge the time fixed by the rules. In the facts and circumstances outlined above, this is an appropriate case to enlarge time for filing the leave to defend application.

8. Therefore, this application is allowed as prayed for without any order as to costs.

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