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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15-07-2025

CORAM

THE HONOURABLE MR JUSTICE C.V. KARTHIKEYAN

A.No.2628 of 2025 in
C.S.No.570 of 2010

M/s.Penguin International
Rep. By Its Managing Partner
Mr.Muthukumar, No.132a, 6th Cross
Street, Vijayanagar, Velachery,
Chennai-600 042.

Applicant(s)

Vs

1. M/s.Binayak Enterprises And 2
Others
Rep.by its Proprietor Mr.Prasanji Rath
CDA, Cuttack, Orissa, B.O.Nagar,
Byshanagal College Road, Jaipur Road,
Orissa

2.The Manager
HDFC Bank Ltd, T.Nagar Branch,
G.N.Chetty Road, Chennai 600 017.

3.The Manager
HDFC Bank Ltd, R.K.Road Branch,
Cuttack, Orissa.

Respondent(s)

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PRAYER

To condone the delay of 2974 days in filing the petition to restore the suit which was dismissed for default on 02/02/2017.

For Applicant(s): M/s.J. James
D.Maharajan

For Respondents: Ms.C.Sangamithirai for D1
Mr.V.Adhivarahan for D2

ORDER

This application has been filed to condone the delay of 2974 days in filing an application to restore the suit which was dismissed for default on 02.02.2017.

2. The suit in C.S.No.570 of 2010 had been filed seeking permanent injunction restraining the third defendant from invoking the bank guarantee for a sum of Rs.38,25,000/- which was given by the plaintiff in favour of the first defendant and to cancel the bank guarantee issued by the second defendant and return the fixed deposit amount to the plaintiff. In the plaint, it had been pleaded that the plaintiff is a partnership firm and had entered into an agreement with the first defendant on 31.12.2009 for procurement of iron ore and logistics. In the said agreement, the first defendant had placed an order for the value of Rs.38,25,000/- before the second defendant and handed it over to the first defendant. The plaintiff had sent a sum of Rs.7,00,000/- through RTGS to the first defendant. Thereafter, on 19.01.2010, the plaintiff also availed a bank guarantee in favour of the first defendant. The first defendant after receiving the

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amount of Rs.7,00,000/- and the bank guarantee of Rs.38,25,000/-, did not supply the goods and did not reply to the demands made by the plaintiff. The plaintiff thereafter issued a letter that they are cancelling the agreement and sought return of the amount of Rs.7,00,000/- sent through RTGS. Thereafter, there were exchange of notices.

3. The first defendant had issued a cheque for a sum of Rs.6,50,000/- after deducting charges of Rs.50,000/-. That cheque was returned on the ground of insufficient funds. The plaintiff therefore contended that the only option available to him was to file a suit seeking permanent injunction restraining the third defendant from invoking the bank guarantee and to cancel the bank guarantee. The jurisdiction of the Civil Court to enter into a discussion on revocation of the bank guarantee is extremely narrow.

4. It is the contention of the learned counsel for the plaintiff that the first defendant had run away with a cash of Rs.7,00,000/- and the bank guarantee on 29.05.2010. The suit had been presented on 24.05.2010. An order of interim injunction was granted on 03.06.2010. Even before that, on 29.05.2010, the first defendant had taken away the amount and the bank guarantee and moved away from the jurisdiction of this Court. There had been no progress in the suit. The suit came to be dismissed by judgment dated 02.02.2017. It had been noted that the suit was posted under the caption 'for dismissal' and since there was no appearance, it had been dismissed.

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5. In the application now filed seeking to condone the delay of 2974 days in filing an application to restore the suit, it had been contended that the learned counsel who had earlier filed vakalath did not appear before the Court. Therefore, the plaintiff had to take steps to engage another counsel to file this application. But the delay is enormous. Even if some consideration is shown, pursuing the suit would only be an exercise of futility, as the first defendant is not available and it is informed that the amount had been deposited in Reserve Bank of India. But, no document to that effect had been presented before this Court.

6. In the counter filed by the respondents 2 and 3, strong objection has been raised to condone the delay. It had been stated that no credible reason has been advanced for the delay which has occurred of nearly 2974 days in filing this application to restore the suit. It is further contended that the bank guarantee has been invoked to the reliable knowledge of the respondents 2 and 3, the amount is now in the deposit of the Reserve Bank of India. The issue of permanent injunction would not arise, since the bank guarantee had already been invoked.

7. In view of that particular fact and in view of the fact that restoring the suit would only become an exercise of futility and further, the first defendant is also absconding even in the criminal case wherein he has been arrayed as an

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accused, I am not inclined to condone the delay for which no credible reason has been advanced. Hence, this application is dismissed.

8. The learned counsel for the applicant / plaintiff stated that the applicant may be granted necessary permission to apply to the Reserve Bank of India for return of the amount. The applicant may pursue such steps, provided, the information given to the Court that the amount is lying in the Reserve Bank of India is a correct information and if the applicant is entitled for making such an application and if such an application is permissible in law.

15-07-2025

Index:Yes/No
Speaking/Non-speaking order
Internet:Yes
Neutral Citation:Yes/No
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C.V.KARTHIKEYAN J.

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To

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