



C.R.P.No.5241 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.06.2025

CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

C.R.P.No.5241 of 2024

and

C.M.P.No.29285 of 2024

- 1.M/s.K.M.Plastics,
Represented by its Partner cum Authorised Signatory,
M.Meenakshisundaram,
188/B2, Pollachi-Coimbatore Main Road,
Near Mullupadi Railway Gate,
Mettupalayam (P.O.) Pollachi,
Coimbatore District – 642 110.
- 2.M.Meenakshisundaram
Partner cum Authorised Signatory of M/s.K.M.Plastics,
188/B2, Pollachi-Coimbatore Main Road,
Near Mullupadi Railway Gate,
Mettupalayam (P.O.) Pollachi,
Coimbatore District – 642 110.
- 3.M.Promodhini
Partner of M/s.K.M.Plastics,
188/B2, Pollachi-Coimbatore Main Road,
Near Mullupadi Railway Gate,
Mettupalayam (P.O.) Pollachi,
Coimbatore District – 642 110.



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4.M.Vijayavalli

Partner of M/s.K.M.Plastics,
188/B2, Pollachi-Coimbatore Main Road,
Near Mullupadi Railway Gate,
Mettupalayam (P.O.) Pollachi,
Coimbatore District – 642 110.

... Petitioners

Vs.

M/s.Shah Trading Corporation,
(A Registered Partnership Firm)
Represented by its Partner, Nitin P.Shah
Head Office, 64, Suramagalam,
Main Road, Leigh Bazzar,
Salem – 636 009.

... Respondent

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the fair and decretal order dated 21.09.2024 passed in I.A.No.5 of 2024 in C.O.S.No.62 of 2023 on the file of the Commercial Court, Coimbatore.

For Petitioners : Mr.N.C.Ashok Kumar

For Respondent : Mr.N.Nithianandam

ORDER

Challenging the order of the Commercial Court, Coimbatore, dated 21.09.2024, made in I.A.No.5 of 2024 in C.O.S.No.62 of 2023, dismissing



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the application under Section 5 of the Limitation Act to condone the delay of 157 days in filing an application to set aside the *ex parte* decree passed against the 2nd petitioner, the present revision has been filed.

2.The suit has been originally filed by the respondent in February, 2021, as Commercial Suit before the Principal District Court, Coimbatore, for recovery of a sum of Rs.1,55,28,089/-. The 2nd petitioner herein is the 2nd defendant in the suit, representing the 1st defendant Company. In fact, after establishment of the Commercial Court, the suit has been transferred to the Commercial Court on 14.03.2023. Prior to such transfer, the defendants had not filed written statement within 120 days as required under the Commercial Courts Act, 2015. However, they had filed written statement only in the month of November, 2021, i.e., beyond the period of 120 days as mandated under the Act. When the matter stood thus, the case has been transferred to the Commercial Court on 14.03.2023. Before the Commercial Court, as the defendants did not file their written statement, they were set *ex parte* on 27.07.2023 and *ex parte* evidence was recorded on 02.08.2023 and judgment was pronounced on 16.08.2023. Thereafter, the present application has been taken out by the petitioners to condone the

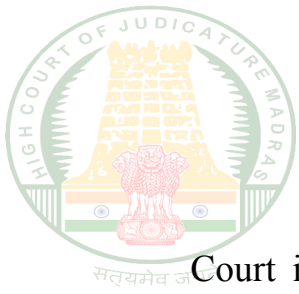


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delay of 157 days in filing the application to set aside the *ex parte* decree, contending *inter alia* that the 2nd petitioner met with an accident and received a bullet injury accidentally and was admitted in Kovai Medical Centre on 04.12.2022 and discharged on 10.12.2022. Even thereafter, he was not in a position to appear before the Court physically. Therefore, there was a delay of 157 days in filing the application to set aside the *ex parte* decree. The said application has been dismissed by the trial Court. Challenging the same, the present revision has been filed.

3.Learned counsel appearing for the revision petitioners would fairly submit that, though the written statement was not filed within the period as mandated under the Commercial Courts Act, even then, the petitioners' right to participate in the trial cannot be taken away. In any event, the petitioners/defendants ought to have been given an opportunity to cross-examine the plaintiff, which has not been done in this case. Therefore, it is his contention that, though *ex parte* decree cannot be set aside as written statement has not been filed, the fact remains that the right of the petitioners to participate in the trial cannot be taken away. In respect of his submission, he has placed reliance on the judgment of the Hon'ble Apex



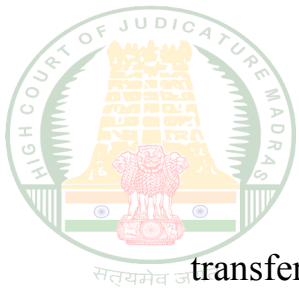
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Court in *Ranjit Singh and another v. State of Uttarakhand and others*
reported in *2024 SCC OnLine SC 2932*.

4. Whereas, the learned counsel for the respondent would submit that the reasons assigned in the petition to condone the delay of 157 days, cannot be accepted for the simple reason that, even at the relevant point of time, the 2nd petitioner had appeared before the criminal Courts in the same campus and the said fact has been taken note of by the trial Court.

5. Heard the learned counsel on either side and perused the materials available on record.

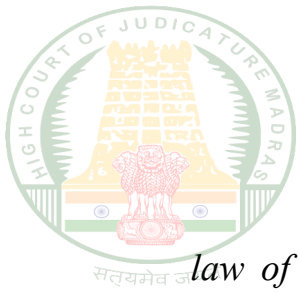
6. It is pertinent to note that the suit itself was laid as a Commercial Suit and was pending before the District Court, whereas, written statement has not been filed within a period of 120 days, which is mandatory under the Commercial Courts Act. If any person fails to file his written statement within the mandatory period, he forecloses his right to make his defence. This is the position already settled by the Hon'ble Apex Court. Admittedly, in this case, written statement has not been filed. Thereafter, the case been



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transferred to the regular Commercial Court on 14.03.2023. Even thereafter, the defendants were not diligent in pursuing their case and therefore, they were set *ex parte* on 27.07.2023 and *ex parte* evidence was taken on 02.08.2023 and the suit has been decreed on 16.08.2023. Therefore, any subsequent development or reason for not appearing before the Court, will not serve any purpose. Even before the alleged accident in the year 2022, the petitioners' right to make their defence was already lost due to non-filing of the written statement within a period of 120 days. Therefore, the contention of the learned counsel for the petitioners that the *ex parte* decree should be set aside, cannot be countenanced.

7.However, the fact remains that the Hon'ble Supreme Court, in ***Ranjit Singh and another v. State of Uttarakhand and others (supra)***, has clearly held that “*even if a defendant does not file a written statement and the suit is ordered to proceed ex parte against him, the limited defence available to the defendant is not foreclosed. A defendant can always cross-examine the witnesses examined by the plaintiff to prove the falsity of the plaintiff's case. A defendant can always urge, based on the plaint and the evidence of the plaintiff, that the suit was barred by a statute such as the*

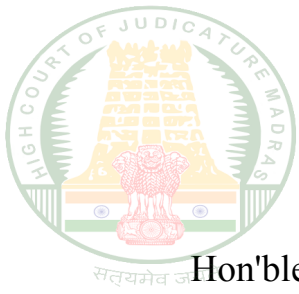


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law of limitation. Therefore, notwithstanding an order passed earlier to proceed ex parte, while deciding an application for striking out the defence, it was the duty of the Court to give an opportunity of being heard to the defendants. However, that was not done. As the suit was fixed on 30th May, 2002, the defendants were entitled to a notice that the suit would be taken up on an earlier date for hearing the application for striking out the defence.”

8. Therefore, even though the petitioners were set *ex parte*, the Commercial Court ought to have granted one opportunity to them to atleast cross-examine the witness examined on the side of the plaintiff. The proceedings and findings of the trial Court do not indicate that any such attempt has been made. Therefore, this Court is of the view that, though the defendants have already lost their right to put forth their defence on record, atleast they should have been given an opportunity to cross-examine the witness, which has not been done in this case. In such view of the matter, though the defendants have not specifically challenged the *ex parte* decree, and the matter is now at the stage of condonation of delay, taking note of the fact that opportunity has not been given as per the judgment of the



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Hon'ble Apex Court in ***Ranjit Singh and another v. State of Uttarakhand and others (supra)***, this Court, in exercise of its powers under Article 227 of the Constitution of India, is inclined to condone and delay and also set aside the *ex parte* decree to give one more opportunity to the defendants to cross-examine the witness P.W.1.

9. Accordingly, the impugned order dated 21.09.2024 passed in I.A.No.5 of 2024 in C.O.S.No.62 of 2023, is set aside, and further, the *ex parte* decree and judgment in C.O.S.No.62 of 2023, dated 16.08.2023, is also set aside for the limited purpose of granting one more opportunity to the defendants to cross-examine the witness P.W.1. It is made clear that the trial Court shall fix a date for cross-examination of P.W.1, and a maximum of two days' time alone shall be given to the defendants for cross-examination. After cross-examination, the suit shall be disposed of within a period of one month thereafter.



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10. With the above directions, this Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

05.06.2025

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Internet : Yes

Index : Yes / No

Speaking order / Nonspeaking order

Neutral Citation : Yes / No

To

The Judge,
Commercial Court (District Judge Cadre),
Coimbatore.



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N. SATHISH KUMAR, J.

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