

ORDERS ON I.A.NO.II & III

1. I.A.No.II is filed by the defendant U/S.151 CPC seeking reopen the case from Judgment to the stage of filing written statement.

2. I.A.No.III is filed by the defendant U/S.151 CPC seeking an order to permit the defendant to file his written statement.

3. Learned counsel for the plaintiff has filed separate objection to both applications.

4. Heard arguments of both sides.

5. Perused the records.

6. The following point do arise for my consideration is;

“Whether the defendant has made out grounds to allow I.A.No.II & III?”

7. My answer to the above point is in the affirmative, for the following;

REASONS.

8. The facts in brief is that; the plaintiff-bank filed the present Commercial suit against the defendant for the relief of

recovery of ₹22,85,794/- from the defendant with interest at the rate of 10.55% p.a., (OD) and 11.25% p.a., (GECL) compounded monthly rests and in default the penal interest at 2% per annum and for costs and such other reliefs.

9. The summons to the defendant and it was served on him on 28.3.2024 and defendant appeared through his counsel on 15.4.2024 and then case was posted for filing written statement on 28.5.2024. Thereafter, in spite of sufficient opportunity he did not file the written statement and it is taken as written statement not filed vide order dated 11.6.2024, then matter was referred to Lok-adalath for pre-conciliation on 3.7.2024, 7.8.2024 and 21.8.2024. On 21.8.2024 the defendant remained absent and hence, it is taken as conciliation not held and returned the file to the court and posted the matter for plaintiff's evidence and for summary judgment on 30.9.2024. At this stage, the case is advanced on the board dated 27.9.2024 and the learned counsel for the defendant has filed the present applications.

10. In the affidavit supporting the I.A.No.II & III the defendant has stated that on the earlier date of hearing he had been to Bengaluru for his urgent professional work about his civil contract work, hence, he could not approach his counsel to file written statement, and then case was posted for judgment, and hence, filed the application to re-open the case from the stage of Judgement to the stage of filing written statement and prayed to permit him to file written statement, if the applications are not allowed, he will be put to more hardship and legal injury, on the other hand no hardship or

legal injury would be caused to other side if the application is allowed and hence, prayed for allowing the I.A.No.II & III.

11. Per contra, the plaintiff has filed separate objections to the said I.As., and contended that even though sufficient opportunity has been given to defendant he did not file written statement and hence, it is taken as written statement not filed vide order dated 11.6.2024. Thereafter, matter was referred to Lok-Adalath for conciliation 3.7.2024 and then on 21.8.2024 and posted the case for plaintiff's evidence on 4.9.2024 and on 23.9.2024 the plaintiff has filed an application for passing summary judgment and the same was allowed and posted for judgement on 30.9.2024. It is further stated that the reasons stated by the defendant are not genuine to reopen the case, the defendant shall file the written statement within 30 days from the date of service of summons, if he fails to file written statement within 30 days, after obtaining the permission from the court, he can file the written statement which shall not be 90 days from the date of service of summons, but in the present case suit summons served to defendant on 15.4.2024, even after lapse of 168 days he did not file the written statement, in order to delay the proceedings the defendant has filed the present application for reopen the case from the stage of judgment to the stage of filing of written statement. Hence, he prayed to dismiss the application.

12. Further, the similar objection filed the plaintiff for I.A.No.III repeating the similar facts as stated in I.A.No.II and prays to dismiss the I.A.No.III.

13. On perusal of the records, it reveals that the plaintiff filed the present suit on 19.2.2024. Summons served on the defendant on 28.3.2024. Defendant appeared through his counsel and filed vakalath on 15.4.2024 and posted the case to file written statement on 28.5.2024, 11.6.2024. On 11.6.2024 he did not file the written statement and prays to extension of time to file written statement and the same was rejected and it is taken as written statement not filed and posted the for plaintiff's evidence. On 3.9.2024 case was referred to Lok-Adalath for pre-conciliation, wherein defendant was present and matter was not settled before the lok-adalath and file returned to court and posted the case for plaintiff's evidence and on 23.9.2024 it was posted for summary judgment. Hence, cause of action to file written statement arose for I.A.No.II & III on 3.7.2024 and I.A.No.II & III is filed on 27.9.2024.

14. At this stage, this court has relied upon the judgment passed in SCG CONTRACTS INDIA PRIVATE LIMITED V/S. K.S.CHAMANKAR INFRASTRUCTURE PRIVATE LIMITED AND OTHERS REPORTED IN 2019(12) SCC 210, has held that the time line prescribed under the Commercial Courts Act are mandatory and the Court does not have the power to condone the delays beyond the stipulated period of 120 days.

15. Here in this case, mandatory time line to file the written statement starts from 3.7.2024. The defendant has approached this court seeking permission to file written statement on 27.9.2024 by filing I.A.No.II & III i.e., within the stipulated period of 120 days from 3.7.2024.

16. Further, this court has relied upon the judgment passed in SCG CONTRACTS INDIA PRIVATE LIMITED V/S. K.S.CHAMANKAR INFRASTRUCTURE PRIVATE LIMITED AND OTHERS. In the said judgment, it is clearly observed that; “when there is a special provision in the code of Civil Procedure for dealing with the filing of written statement and there is amendment to the Order VIII Rule 1 CPC on the filing of written statement, the amended provisions of CPC will have to be mandatory and thereby in the said judgment, the written statement which was filed beyond the statutory period of 120 days was ordered to be taken off the record.”

17. In this case, the defendant has filed the written statement within the period of 120 days and further in the affidavit the defendant has explained for non-filing of the written statement and further as there is specific provision i.e., amendment to Order VIII Rule 1 CPC which provides the defendant may be permitted to file the written statement within the statutory period which shall not be later than 120 days from the date of service of summons and on expiry of 120 days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the court shall not allow the written statement to be taken on record.

18. In the present case, though, the suit summons was served on defendant on 28.3.2024, he appeared through his counsel and filed vakalath on 15.4.2024 and matter was posted for filing written statement on 28.5.2024, 11.6.2024 and on 11.6.2024 it was taken as written statement not filed and posted for plaintiff's

evidence. Thereafter, on 3.7.2024 matter was referred to Lok-Adalath for pre-conciliation, wherein both parties present, but not agreed for the settlement, as such file returned to court and posted for summary judgment on 23.9.2024. Hence, the cause of action for filing the written statement is to be considered as on 3.7.2024 and the defendant ought to have file his written statement within the stipulated period of 120 days i.e., on or before 3.11.2024. Hence, the defendant has filed both applications along with written statement on 27.9.2024 i.e., within the stipulated period of 120 days.

19. Having regard to the amendment to the provision of Order VIII Rule 1 CPC and further the observation made in the judgement relied by this court and taking support of the observation made in the said judgment, this court is of the opinion that the defendant has made out grounds to allow the application filed for reopen the case from the stage of Judgment to the stage of filing written statement and further he is permitted to file written statement. Therefore, the applications I.A.No.II & III filed by the defendant deserves to be allowed. Accordingly, I answer the above point in the affirmative and I proceed to pass the following;

ORDER

I.A.No.II & III filed U/S.151 CPC are allowed.

It is reopen the case from the stage of summary judgement to the stage of filing written statement.

The defendant is permitted to file written statement.

No order as to cost.

The written statement filed along with these applications are taken on record.

For Issues. Call on:

Principal District & Sessions Judge,
Davanagere.