

IN THE COURT OF SMALL CAUSES, AT MUMBAI
ORDER BELOW EXHIBIT No.8
IN
R. A. E. SUIT No.936 OF 2023

1. Mr. Jaykumar Himmatlal Dani & Anr. . . Plaintiffs.

Versus

1. Mr. Ashesh Manikant Shah & Ors. . . Defendants.

Coram : S. B. Todkar,
Judge, C.R.No.22
Date : 10/11/2023

ORAL ORDER :

This is an application filed by defendant No.2 for condonation of delay and to take the written statement of defendant Nos.1 & 2 on record.

2. Perused the application and handwritten say given by the Ld. Holding Advocate for plaintiffs on the application overleaf. Heard Ld. Advocate for both side.

3. It appears from the record that plaintiffs have filed present suit against defendants for eviction on the grounds specifically mentioned in the plaint. As per the contents of present application the writ of summons served on defendant No.2 on 04/09/2023. Thereafter, he engaged an Advocate but said Advocate was out of town and he could not prepare the written statement. Thereafter, some days after he sent letter to him stating that he will not be able to appear in the matter and returned all his papers. Thereafter, he engaged present Advocate and given information to prepare written statement. However, they could not file written statement within 30 days as per Order VIII Rule 1 of the Code of Civil Procedure, 1908. Now the written statement is ready. Hence, the

application.

4. Admittedly, writ of summons served on defendant No.2 on 04/09/2023. The 30 days expired on 03/10/2023. Defendants have filed present application on 10/11/2023. There is delay of 36 days to file the present application after the expiry of the 30 days from the service of writ of summons. The provision under Order VIII Rule 1 of Code of Civil Procedure, 1908 does not deal with power of Court and also does not specifically take away power of Court to take written statement on record though filed beyond the time provided for and the plaint of plaintiff being going to be opposed, it shall be adjudicated on merit and for the fair adjudication of the matter in hand, this application deserves to be allowed as the defendant No.2 on oath given sufficient reasons for causing delay caused for filing written statement. Alongwith present application, they have filed written statement on record. For deciding the real controversy between the parties, considering the nature of suit, allegations made against the defendants in the plaint, natural justice and opportunity of being heard, it is necessary to give opportunity to the defendants to put their defence. I found substance in the submission made in the present application. Hence, I proceed to pass the following order.

ORDER

1. Application Exh.8 is allowed.
2. Delay caused in filing present application with written statement is hereby condoned and permission granted to take written statement filed by defendants on record.

[S. B. Todkar]

Date : 10/11/2023

Judge, Court of Small Causes, Mumbai.
[Court Room No.22].