

IN THE COURT OF SMALL CAUSE, MUMBAI

**ORDER Below Exh-10
In
R.A.E. SUIT NO. 560/903 OF 2013**

Mr. Kirit Ramdas Kapadia & Ors. .. Plaintiffs

Vs.

Mr. Lalitkumar Popatlal .. Defendant

Ms. E. A. Gonsalves .. Advocate for plaintiffs.
Mr. R.P. Chheda .. Advocate for defendant.

Coram : Mrs. Sharayoo V. Sahare,
Judge, C.R.No.7.
Date : 30th September, 2014.

ORAL ORDER :

1. This is an application by the defendant seeking condonation of delay in filing written statement wherein delay has been caused for 39 days. It is contended by the defendant that the suit summons was not properly served upon him, but at the address of his brother and thereafter, time has consumed as he was tracing important old papers as called upon by his advocate and could not file it written statement within stipulated time of 30 days as per the service of summons dated 06.05.2014.

2. The plaintiff has strongly opposed the application by filing his hand written reply that nobody has prevented the defendant to file his written statement during the vacation period and even after opening of the Court. It is stated that the reason stated by him are not sufficient to condone the delay. Hence, application be rejected.

3. Heard both sides. Perused the record. The plaintiff has given address of the defendant as Room No.70, 3rd floor, Morarji Velji Building, situated at 9/15, Dr. M.B.Velkar Street, Mumbai-400 002, whereon on one attempt to serve the defendant on said address was done on 04.07.2013. The summons could not be served as the premises was found locked. However, from the endorsement on the suit summons (Exh-7), it is seen that the plaintiff got the new address of defendant as Room No.9, 3rd floor, 82/84, Acharya House, Anandilal Poddar Marg, Dhobi Talao, Mumbai-400 002 on 28.03.2014. But before making any attempt by bailiff to serve the defendant on this new found address, the brother of the defendant accepted the service of suit summons on his behalf on the address stated in the cause title of the suit. Hence, it cannot be said that the defendant is not duly served. Though, it is stated that the defendant is out of city at his native place at Rajasthan and returned back on 06.07.2014, no document to show his journey to Rajasthan and back to the city has been placed on record. Further it is stated that the defendant was asked by his advocate for some papers which he was tracing out. But in the list of documents annexed with the written statement alongwith this application, no such document is found. However, the present application alongwith written

statement is filed by defendant on 02.08.2014 and thus, there is delay of 88 days from the date of the service of suit summons in filing of the written statement.

4. As per Order-8, Rule-1 of the Code of Civil Procedure, extended time limit for filing written statement by the defendant is 90 days from the date of the service of suit summons with reasons to be stated therein. It is to be stated here that unavailability of the defendant in the city during the period of 30 days after the service of suit summons can be said as the reason for the delay. However, as the written statement is coming on record within the period of 90 days, hence to give fair opportunity to the defendant to place his defence on record, the application is allowed and I proceed to pass following order.

ORDER

1. The application is allowed.
2. Delay of 88 days is hereby condoned and written statement of defendant is taken on record subject to costs of Rs.1,000/- to be paid to the plaintiff.

Order Dictated on : 30.09.2014.
Order Transcribed on : 28.10.2014.
Order Checked & Signed on : 28.10.2014.

(S.V. Sahare)
(Judge, C.R.No.7)