

IN THE COURT OF SMALL CAUSES AT MUMBAI**ORDER BELOW EXHIBIT 40****IN****R.A.E. SUIT NO.1455 OF 2015
(CNR : MHSCA2-002550-2015)**

Mrs. Shamsi Malek Malekpur ... Plaintiff

v/s

Pems Investment Pvt. Ltd. ... Defendant

**Coram : K. M. Jaisingani,
Judge, C. R. No.15,
Date : 08.01.2019**

ORAL ORDER :

1. The defendant has filed this application for extension of time for depositing amount of costs.
2. The application is opposed by plaintiff.
3. Heard both sides.
4. The defendant has filed application Exh.30 for condoning delay in filing additional written statement and documents. By order dated 04.05.2018, the additional written statement of defendant was taken on record on payment of costs of Rs.1,000/- payable to plaintiff. In spite of sufficient opportunities, the defendant did not pay amount of costs to the plaintiff. Thereafter, the defendant moved application

Exh.36 for grant of permission to deposit costs. By order dated 16.10.2018, the defendant is permitted to deposit amount of costs on or before next date i.e. 01.11.2018. Thereafter, two dates are passed but the defendant has not deposited the costs. Today, the defendant is seeking extension of time for deposit of costs. The defendant has submitted that on 01.11.2018, an Associate who recently joined the Chamber of advocate for defendant, was assigned work of deposit of costs but she was not aware about the Court proceeding and therefore, she could not deposit the costs on 01.11.2018. The application is opposed by plaintiff on the ground that the plaintiff has already challenged order passed below Exh.30 by which delay in filing written statement was condoned before Hon'ble High Court Judicature at Bombay. The application is also opposed on the ground that there are no sufficient grounds as submitted by the defendant.

5. The learned counsel for defendant submitted that there are sufficient grounds for condoning delay in depositing the costs. As against this, the learned counsel for plaintiff submitted that there are no sufficient grounds to extend the time as prayed for. The learned counsel for plaintiff has relied on judgment of **Hon'ble Supreme Court of India passed on 12.08.2002 in Civil Appeal No.7975 of 2001 Dr. J. J. Merchant and ors. V/s. Shrinath Chaturvedi**, wherein Hon'ble Apex Court held that there is legislative mandate that written statement of defence is to be filed within 30 days of service of suit summons. The same ratio is reiterated by **Hon'ble Supreme Court of India passed on 04.12.2015 in Civil Appeal No.10941 of 2013 New India Assurance**

Co. Ltd. V/s. Hilli Multipurpose Cold Storage, CIVIL APPEAL NO.4266-4267 OF 2018 dated 07.05.2018 ATCOM TECHNOLOGIES LIMITED v/s. Y. A. CHUNAWALA AND CO. & ORS. and 2004 (5) Bom CR 548 Shailaja A. Sawant (Dr.) v/s. Sayajirao Ganpatrao Patil relied upon by learned counsel for plaintiff.

6. The learned counsel further submitted that delay cannot be condoned in the routine course. He placed his reliance on **LAWS(SC)-2013-9-32 Esha Bhattacharjee v/s. Managing Committee of Raghunathpur Nafar Academy**, wherein the Hon'ble Apex Court held that the Courts are not supposed to legalise injustice but are obliged to remove injustice. No presumption can be attached to deliberate causation of delay but, gross negligence on part of counsel or litigant is to be taken note of. The learned counsel relied on judgment of **Hon'ble Supreme Court of India in Civil Appeal No.3654-58 of 2002 passed on 08.07.2002 Topline Shoes Ltd. V/s. Corporation Bank**, wherein the Hon'ble Apex Court held that the time to file reply may not be passed repeatedly unmindful of and totally ignoring the provision that the extension may not exceed 15 days. He further relied on **1993 SCR (1) 794 Salil Dutta v/s. T.M. and M.C. Private Ltd.**, wherein the Hon'ble Apex Court held that improper advice of advocate is not sufficient cause for setting aside exparte decree.

7. The learned counsel further submitted the person seeking relief of condonation of delay has to explain that there are sufficient grounds for condoning the delay. The learned counsel relied on

judgment of our Hon'ble Parent High Court in Writ Petition No.164 of 2015 dated 03.09.2015 Mr. Bolu Bandodkar v/s. Diana Zita Agneta D'Souza E Martyres and ors., wherein it is observed that unless and until it is shown that the party had sufficient cause for not approaching the Court within time, the delay cannot be condoned. Finally the learned counsel relied on judgment of Hon'ble High Court Delhi dated 18.05.2017 in MODDUS MEDIA PVT. LTD. V/s. M/s. SCONE EXHIBITION PVT. LTD., wherein it is held that if the litigant does not appear in the Court and leaves the case at the mercy of his counsel without caring as to what different frivolous pleas / defences being taken by his counsel for adjournments is bound to suffer.

8. By pointed out all the authorities, the learned counsel tried to satisfy this Court that there are no sufficient grounds for extension of time as prayed for. After carefully gone through the argument advanced by both sides, here, I like to mention that by order below Exh.30, the delay is already condoned. Most of the authorities cited by learned counsel of plaintiff are in respect of condoning delay in filing written statement. Here, already delay is condoned. The defendant has only failed to deposit amount of costs. Already the sufficient time is given to defendant to deposit amount of costs. In spite of sufficient opportunities, the defendant has failed to deposit amount of costs. By order dated 16.10.2018 passed below Exh.36 again time was granted to defendant to deposit costs upto 01.11.2018. Thereafter, two dates are passed. But, the defendant has not deposited amount of costs. In the interest of justice, I find it proper to permit the defendant to deposit amount of

costs. I find it proper to permit the defendant to deposit amount of costs. I find it proper to impose costs on the defendant on this occasion also. Therefore, the application is liable to be allowed. Hence, I pass following order :

ORDER

1. The application is allowed.
2. The time for depositing costs as per order below Exh.30 is extended till 18.01.2019 as a last chance on payment of costs of Rs.4,000/- payable to the plaintiff.
3. The defendant to deposit costs Rs.1,000/- as per order below Exh.30 and Rs.4,000/- as per order on this application on or before 18.01.2019.
4. If costs is not deposited, the order below Exh.30 stands vacated automatically without any reference on the part of the plaintiff.

(K. M. Jaisingani)
Judge, C.R.No.15
08.01.2019

Dictated on : 08.01.2019
Transcribed on : 09.01.2019
Checked & signed on : 09.01.2019