

IN THE SMALL CAUSES COURT AT MUMBAI
ORDER BELOW EXHIBIT NO.09
IN
R.A.E. SUIT NO.1455 OF 2015

Mrs. Shamsi Malek Malekpur]...Plaintiff

Versus

Pems Investments Pvt. Ltd.]...Defendant

D. J. Merchant, Ld. Advocate for Plaintiff

M/s. K. P. Tiwari & Co., Ld. Advocate for Defendant

Coram : Shri. K.P. Kshirsagar
Judge,
Court Room No. 15
Date : 04.05.2016

ORDER

1. This is an application filed by the defendant for condonation of delay in filing its written statement and for taking its written statement on record.

2. In short it is the case of the defendants director that, for his business he is frequently required to go out of Mumbai. Moreover, due to his domestic and business engagement he could not contact his advocate within time and he could not instruct him to take appropriate steps in the matter and to prepare its written statement. Due to the same there is delay of 155 days in filing written statement. If the delay is not condoned then irreparable loss will be caused to the defendant which can not be compensated in terms of money. The defendant has good case on merits. Therefore, defendant prayed to condone the delay in filing its written statement and to take its written statement on record.

3. Plaintiff opposed the application. It is the case of the

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plaintiff that, the delay is of 161 days and it cannot be condoned on such false and flimsy excuses and concocted stories. Therefore, plaintiff submitted to dismiss the application.

4. Heard Ld. Counsel for the defendant and Ld. Counsel for the plaintiff at length.

5. Ld. Counsel for plaintiff kept reliance on the following citations I have gone through the same. All the citations are in regard of Order 8 rule 1 of Code of Civil Procedure, 1908.

1. New India Assurance Co. Ltd. v/s. HILLI Multipurpose Cold storage Pvt. Ltd, SC dt.04.12.2015 CA 10941 of 2013
2. Iridium India Telecom Ltd. v/s. Motorola Inc, SC 2005(3) BCR 781 (SC) =2005(1) MhLR 821 (SC)
- 3) J.J.Merchant v/s. Shrinath Chaturvedi, SC dt.12.08.2002, 2003(1) BCR 24 = AIR 2002 SC 2931
- 4) Pandurang Dessai v/s. Beraldin Tawaeres, HC BOM (Goa Bench) dt. 20.10.2006 = 2007(1) BCR 296
- 5) Sameer Runwal v/s. Prakash Kothari, HC MP dt.30.04.2010 AIR 2010 MP
- 6) Iridium India Telecom Ltd v/s. Motorola Inc, BOM 2003 2004 (1) MhLJ 532 = 2004(1) ALL MAR 418 = 2004 (2) BCR 530
- 7) Anil Phutane v/s. Madhukar Phutane, HC BOM (Nagpur Bench) 2005, 2006(1)MhLJ 369=2006(1)BCR 786 = 2006(1) ALL MR 555 = AIR 2006 BOM 1
- 8) Prabhakar Mule v/s. Bhagwan Choudhari, HC BOM

(Aurangabad Bench)2003, 2004(2) MhLJ 1058=

2004(5) BCR 568

9) Kaluba Upare v/s. Rangubai Alole, HC BOM

(Aurangabad Bench)2003, AIR 2007 BOM 355 = 2007 (3)

MhLJ 624=2007(4) ALL MR 252

10) Sukhdeo Rai v/s. Ashok Rai, Guhavati HC 2004, AIR 2005

GAU 37 Ranjan Gagou J, WP(C) 462 of 2004 9 MAR 2004

11) Pundlik Kawarse v/s. Baban kawarse, 2006(3) ALL MR

683=2006(5) BCR 796

12) Basawaraj v/s. The Spl. Land Acquisition Officer, air 2014

SC 746=2013(5) ALL MAR 934

13) Arun Makhijani v/s. Jamnadas Tullani, 1989(1) LSSOFT

SC 63=1990(1)BOM CR SC 334

6. Perused the record. From the record it reveals that, suit summons was served to the defendant on 23.10.2015 and the present application is filed on 11.03.2016. The plaintiff did not admit the cause of delay in filing and written statement. The director of defendant on solemn affirmation stated that, the contents of the present application's are true and correct to his own knowledge. The cause given for non filing of written statement within statutory period appears to be bonafide. Therefore, there appears sufficient cause for non filing of written statement within prescribed period. In view of observations in the case of **Pandurang alias Shashi Dessai s/o. Krishna Dessai v/s. Beraldin Tavaeres d/o. Late Egidio Tavares**, reported in 2007(1) **LJSOFT 58**, in which the case of **Kailash V. Nankhu & Ors., 2005(4)SCC 480** is referred, it reveals that, the written statement can

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be taken on record after expiry of the period of 90 days. Therefore, there appears no substance in the case of plaintiff that written statement cannot be taken on record after expiry of 90 days from the date of suit of service summons. The matter is pertaining to valuable immovable property. From the application there appears just and exceptional circumstances for the delay in filing the written statement. Therefore, there is just and exceptional ground for condonation of delay in filing written statement in the present case.

7. As per provisions of Order VIII Rule 1 of the Code of Civil Procedure, 1908, the written statement has to be filed within 30 days from the date of receipt of summons. However, if there are reasons, the Court can extend the time up to 90 days. Provisions of Order VIII Rule 1 of the Code of Civil Procedure, 1908 are made to curb the mischief of unscrupulous defendant adopting dilatory tactics, delaying the disposal of cases causing inconvenience to the plaintiff. The object is to expedite the hearing and not to scuttle the same.

8. In the present case, delay does not appear to be intentional and there appears just cause for non filing the written statement within prescribed period. Moreover, the matter pertains to valuable immovable property. Considering the above facts, it will be proper to give an opportunity to defendant to contest the suit on merits by filing her written statement on record.

9. Inconvenience and delay caused can be compensated by awarding costs. No prejudice will be caused to the plaintiff. Therefore, I proceed to pass the following order.

: ORDER :

1. The application is allowed, subject to payment of costs of Rs. 1500/- (Rupees One thousand Five hundred only) to the plaintiffs to be paid on or before next date.
2. On payment of costs, the written statement filed by defendant be taken on record.
3. Costs in cause.

K.P. Kshirsagar
Judge,
C.R. No.15

Date : 04.05.2016

Order dictated on : 04.05.2016
Order Transcribed on : 04.05.2016
Order Checked on : 06.05.2016
Order corrected on : 07.05.2016
Order signed on : 23.05.2016