

CNR : MHSCA2-002550-2015

IN THE COURT OF SMALL CAUSES AT MUMBAI

ORDER BELOW EXHIBIT 30

IN

R.A.E. SUIT NO.1455 OF 2015

Mrs. Shamsi Malek Malekpur

... Plaintiff

v/s

Pems Investment Pvt. Ltd.

... Defendant

**Coram : P. D. Zambre,
Judge, C.R.No.15,
Date : 04.05.2018**

ORAL ORDER :

The defendant has filed this application for condonation of delay in filing additional written statement on behalf of the defendant and permission to file written statement.

2. In short, it is the application of the defendant that the plaintiff has filed false, frivolous, vexatious suit against it. The defendant has received amended plaint on 12.12.2017 and it is adjourned for additional written statement on next date i.e. 20.01.2018. But, additional written statement could not be finalised as advocate was on vacation. Thereafter, busy in urgent matters. On 20.01.2018, additional written statement was ready but same could not be finalised as advocate was held up in Dindoshi Court and matter was posted on 06.02.2018 on

which advocate Mishra was held up in Court Room No.13 of the City Civil Court. Hence, matter is posted for order on 08.03.2018 on which the Court is not sitting. Therefore, it is adjourned till 13.03.2018. Therefore, there is delay of 60 days but it is not intentional. Hence, prayed to condone the delay and permission to file additional written statement on record. The application is supported with additional written statement.

3. Say of the plaintiff is called. The plaintiff strongly objected the application by reply vide Exh.25 and contended that said company is nothing but set up to fraud with the Government and landlord. It is nothing but short of blatant lies with ISO company. Other contents of the application are denied. It is contended that instead of 12.12.2017 amended plaint was served on the defendant on 29.11.2017. Reason of absence of advocate is false. There is no sufficient ground to condone the delay. There is delay of 102 days to file additional written statement. It is contended that if delay is more than 90 days, it should not be condoned. The reasons are false and flimsy. It is nothing but cat and mouse game with the Court as well as the plaintiff by the defendant. Hence, prayed to reject the application. The application is supported with documents annexed.

4. Heard both learned advocate for the parties. They argued to the tune of their application and say. The defendant relied upon bunch of citations. Those will be referred as and when their reference is necessary. Sum and substance of the application is that the defendant

wants to condone the delay contending that due to difficulty of advocate and initially for want of instructions, additional written statement could not be filed within time. Therefore, the defendant wants condonation of delay which is strongly objected by the plaintiff. For condonation of delay, reasons given are advocate is on vacation, later on busy in urgent matters and thirdly, busy in other Courts. All the reasons appears to be in respect of difficulties of the advocate. It is settled principle of law that for difficulties of advocate, party should not be suffered. In the circumstances, it will not be proper to reject the application only on technical grounds. Hence, the application is liable to be allowed.

5. The plaintiff relied upon **Kanaklata Das & Ors. V/s. Naba Kumar Das & Ors. Civil Appeal No.3018 of 2008, dated 25.01.2018.** I have gone through the said ruling. But, facts and circumstances of the said case law different and not relevant. But, ruling is in respect of relationship of the landlord and tenant and necessity of reason for eviction suit, which has no concern with condonation of delay. In the circumstances, that ruling is not useful to the plaintiff. The plaintiff relied upon **NEW INDIA ASSURANCE CO. LTD. V/S. HILLI MULTIPURPOSE COLD STORAGE PVT. LTD., CIVIL APPEAL NOS.10941-10942 OF 2013.** But, the facts of the said case are also different in which it is held that view of majority will be upheld. Hence, that ruling is not applicable to the case. The plaintiff relied upon **J. J. Mechant (Dr.) and Ors. Vs. Shrinath Chaturvedi 2002(9) LJSOFT (SC) 22.** I have gone through the ruling. It is in respect of consumer dispute in which on page No.39 in paragraph No.15 it is held by his

lordship of Honourable the Apex court that the written statement should have to be filed within 90 days. But the fact of the case are different and ratio decided is also different. Hence, it is not useful to the plaintiff. The plaintiff relied on **Sameermal Runwal v. Prakashchandra Kothari and Or AIR 2010 MADHYA PRADESH 178**. I have gone through the said ruling. It is in respect of filing of joint written statement and withdrawn of written statement by one of the defendant which is not allowed by their Lordship of the Honourable, the High Court. Hence, this ruling is not useful to the plaintiff.

6. The plaintiff relied upon **Pandurang alias Shashi Dessai s/o Krishna Dessai Vs. Beraldin Tavaeres d/o Late Egidio Tavares 2007 (1) LJSOFT 58**. I have gone through the said ruling in which his Lordship of the Honourable the High Court held in paragraph No. 11 and 12 that written statement shall have to be filed within 30 days and at the most within 90 days. The defendant has woken up after ninety days to file written statement, hence there is no reason to interfere the order of rejection of the application for filing of written statement. But the facts are different. It is additional written statement. Moreover, there is attempt on behalf of the defendant to file written statement but due to difficulties of advocate it is remained to be filed. Hence, the defendant should not suffer. Hence, this ruling is not useful to the plaintiff.

7. The plaintiff relied upon **Iridium India Telecom Ltd. Vs. Motorola Inc. 2005 (2) LJSOFT SC 9** in which it is held that written

statement shall have to be filed within 30 days and most to most within 90 days, subject to explanation. In the matter, the application appears to be filed within 3 months. The plaintiff objected date of service but that is matter of merit which will require evidence. Hence, as per contention of the defendant, it should have to be accepted that the delay is of 60 days. Though it is presumed that delay is more than 60 days still reason behind delay is material and length of delay is not material. After perusal of record, it appears that due to difficulty of advocate, there is delay and for difficulties of advocate and on technical grounds, it will not be proper to deny substantial justice in the matter because if written statement will not come on record, the defendant will remain unheard on the point proposed additional written statement. It is settled position of law that if other side can be compensated in terms of money then, the Court should be liberal to condone the delay.

8. The plaintiff relied on **Prabhakar Madhavrao Mule Vs. Bhagwan Mitharam Choudhari 2004 (6) LJSOFT 50**. I have gone through the said ruling. It is held in the ruling by his lordship of the Honourable the High Court Bombay that written statement shall have to be filed within 90 days and hence rejection of the application for enlargement of time is liable to be rejected and rejection of the application does not call for interference. But later on the said view is changed in subsequent judgments of the Honourable, the High Court. Hence, it is of no use to the plaintiff. The plaintiff relied on **Sukhdeo Rai v. Ashok Kumar Rai and others AIR 2005 GAUHATI 37**. I have gone through the said ruling in which his lordship of the Honourable the

Gauhati High Court held in paragraph No.5 that after 90 days, the court has left no power to extend time for filing of written statement. But that view is later on changed. Hence, that ruling is not useful to the plaintiff.

9. The plaintiff is relied on **Kaluba Madhavrao Upase Vs. Rangubai Atole & Ors. 2007 (6) LJSOFT 158**. I have gone through the said ruling in which his Lordship of the Honourable the Bombay High Court held in Paragraph No. 7 and 8 that in exceptional and extraordinary circumstances, the Court has discretion to extend time beyond prescribed period. In the present case written statement remained to be filed due to difficulties of the advocate which is exceptional circumstance. Hence, in view of this ruling the applicant shall have to be allowed to file written statement. The plaintiff relied on **Anil Kushabrao Phutane Vs. Madhukar Kushabrao Phutane and others 2006 (2) LJSOFT 102**. I have gone through the said ruling in which their lordship of the Honourable the High Court Bombay held that it is not justified while rejecting the application that after ninety days this court has no power to take the written statement on record after 90 days. The said ruling empowers the Court to consider the ground of not filing written statement on record. Hence, it is not useful to the plaintiff. On the contrary, it support the defendant. One more ruling is also relied upon by the plaintiff i.e. **Bolu s/o Shanu Bandodkar Vs. Diana Zita Agnela D'Souza e Martyers & ors. 2015 (11) LJSOFT 31**. I have gone through the said ruling in which his lordship of the Honourable the High Court Bombay held in paragraph Nos. 10 and 11 that length of delay is not material and reason behind

delay is material. If reason is well founded then delay does not affect right of the parties. In view of this ruling length of delay is immaterial. Hence, it is not useful to the plaintiff. In the present suit, delay caused to file additional written statement appears to be due to difficulty of advocate in which the defendant has no role of play except to give instructions and according to the application, instructions were given. In the circumstances, if subject to costs, the application is allowed, no prejudice will be caused. Considering length of delay and considering the reason beyond it, moreover considering that it is additional Written Statement due to amendment in plaint, if application is allowed subject to costs of Rs.1,000/-, it will suffice the purpose and meet real ends of justice. Rejection of the application will cause prejudice to the defendant which is against principle of natural justice. Hence, the order :

ORDER

1. The application is allowed subject to costs of Rs.1,000/-.
2. Additional written statement be taken on record after payment of costs.

(P. D. Zambre)
Judge, C.R.No.15
04.05.2018

Dictated on : 04.05.2018
Transcribed on : 09.05.2018
Checked & signed on : 13.06.2018