

IN THE BOMBAY CITY CIVIL COURT, AT MUMBAI

NOTICE OF MOTION NO.298/2016

IN

SUIT NO.3418/2014

Mr. Narendra Kumar Gupta

....Plaintiff

V/s.

1. Abu Dhabi Commercial Bank Ltd. and Ors.

....Defendants

Adv. Mr. N. P. Wagle for plaintiff.

Adv. Mr. Sankalp for deft No.1,3 and 4.

CORAM : HHJ Shri Sanjay V. Patil,

C. R. No.01

DATE : 22.10.2016

(Dictated in open court)

ORDER

1. Defendant no.1, 3 & 4 have taken out this notice of motion for condonation of delay of 215 days and for filing written statement.

2. In short, in his affidavit in support, C.A. of defendant no.1, 3 & 4 submitted that the matter was listed on 19.01.2015 for filing writ of summons and thereafter on 17.02.2015 vakalatnama was filed and defendants prayed for time and the matter was adjourned for filing of written statement and affidavit of service. On 27.10.2015, the Court was not presiding over on that day and the matter was adjourned. He further submitted that the delay in the present case is caused due to inadvertence and there is no intentional delay and prayed for allowing the notice of motion.

3. As per affidavit in reply, the plaintiff in short, submitted that the matter was adjourned on 01.09.2015 for filing written statement and thereafter, defendants have not filed written statement and present notice of motion was taken out after 215 days and plaintiff is already suffering financially due to illegal termination and hence, prayed for dismissing the notice of motion.

4. I have heard Adv. Naik, Ld. Counsel for the defendant and Adv. Wagle for plaintiff.

5. In short, the Ld. Counsel for the defendant pointed out that the notice of motion taken out by the defendant is bonafide and there is no intentional delay and prayed for allowing the notice of motion and relied on the observations in the case of **Sambhaji & Others V/s. Gangabai and Ors., 2008(17) SCC 117.**

6. On the other hand, Ld. Counsel for the plaintiff submitted that the defendants have not taken any steps during the long period of 215 days and incase, notice of motion is allowed, cost may be imposed on the defendant.

7. I have gone through the observations in the above mentioned case. Hon'ble Supreme Court observed that the Rule 1 of Order 8 is not substantial law and opportunity should not be ordinarily denied to the defendants for participation in the process of justice. Hence, considering the above observations and facts in the present case, I find that notice of motion may be allowed. Plaintiff has filed present suit claiming the relief of termination of the plaintiff from the services of defendant bank is illegal and arbitrary. Hence, the dispute should be decided on merit. Hence, motion can be allowed with costs. In the facts and circumstances of the case the reasonable amount of cost would

be Rs.7,000/-. In the result, I proceed to pass following order.

ORDER

1. Notice of motion No. 298/16 is made absolute in terms of prayer clause (a) and (b) with cost of Rs.7,000/- to the plaintiff.
2. Defendant No. 1, 3 and 4 shall pay cost within a period of four weeks from today and shall tendered written statement within a period of four weeks.
3. **Notice of motion is disposed off accordingly.**

(Sanjay V. Patil)

Judge
City Civil Court,
Gr. Bombay.

Date : 22.10.2016

Order is dictated and
delivered in open Court on : 22.10.2016

Same is transcribed, corrected
and signed on : 24.10.2016

(Sanjay V. Patil)

Judge
City Civil Court,
Gr. Bombay.

"I affirm that the contents of this PDF file order are
the same, word to word, as per the original order ."

Mrs. S. W. Tuscano (Stenographer) HHJ Sanjay V. Patil (C.R.No.01)

Date of Pronouncement of order : 22.10.2016

order signed by the P.O. On : 24.10.2016 order uploaded on : 24.10.2016