

IN THE COURT OF SMALL CAUSES AT MUMBAI

ORDER BELOW EXHIBIT – 10

IN

R.A.D. SUIT NO.564 OF 2019

[CNR-MHSCA-2000919-2019]

**Smt. Ushma Atul Pandya
Versus**

.....Plaintiff

1.Jaisingh Dungarshi Thakkar

2.Sadguru Reality

.....Defendants

Coram : D.S. Dabhade

Judge, C. R. No. 26

Date : 23rd August, 2019

ORDER :

Read the application and say filed by the plaintiffs. Heard, the Ld. Counsel for the parties.

2. It is an application for con-donation of delay in filing the Written Statement of defendant No.2. It is stated that, writ of summons were received by Mrs. Sonali on behalf of defendant No. 2 on or about 23.04.2019, but she kept the same in the office file but forgotten to deliver/handover the same to him or to other partner. He has stated that, on 14.08.2019 when she kept the papers in file along-with writ of summons and copy of Plaint, she noticed the same, gave said papers expressing the regrets for her undeliberate mistake. Therefore, he could not file Written Statement within 30 days and caused 90 days delay. The delay is not intentional or deliberate. No prejudice will be caused to

the plaintiffs, if the delay in filing the Written Statement is condoned. Hence, prayed that the same may be condoned and Written Statement be taken on record.

3. Ld. Counsel for the plaintiffs filed say on the docket and denied the contents of the application and raised objection to allow the application as no sufficient reason for delay is given. If the application may be allowed then cost may be imposed.

4. According to the defendant, writ of summons were received by Mrs. Sonali on behalf of defendant No. 2 on or about 23.04.2019, but she kept the same in the office file but forgotten to deliver/handover the same to him or to other partner. He has stated that, on 14.08.2019 when she kept the papers in file along-with writ of summons and copy of Plaint, she noticed the same, gave the said papers expressing the regrets for her undeliberate mistake. Therefore, he could not file Written Statement within 30 days and caused 90 days delay. The said reason for not filing of Written Statement within time is not at all considered to be an exceptional circumstances.

5. However, the provisions of Order 8 Rule 1 of the Code of Civil Procedure is discretionary and not mandatory. Even, the Court can extend the time to file the Written Statement upto 90 days upon consideration of the exceptional circumstances. But in the case in hand, delay is of 90 days. Considering the said fact, provision of law and in the interest of justice to decide the matter on merit, it is just and proper to condone the delay and grant a permission to the defendant No.2 to file his Written Statement on record. For that, the defendant shall have

to pay compensatory cost to the plaintiff. Hence, I pass the following order :-

:: O R D E R ::

Application (Exhibit-10) is allowed with costs of Rs.500/- to be paid to the plaintiff on or before next date. Payment of cost is condition precedent. Both parties to take note.

(Dictated and pronounced in open Court)

Mumbai.

Dt. 23.08.2019.

Dictated On : 23.08.2019.
Transcribed on : 23.08.2019.
Checked on : 23.08.2019
Signed on : 23.08.2019.

(D.S. Dabhade)

Judge, C. R. No.26

(D.S. Dabhade)
Judge, C. R. No.26