

**IN THE COURT OF SMALL CAUSES AT BOMBAY
ORDER BELOW EXHIBIT - 10**

IN

**R.A.E SUIT NO. 1856 of 2017
CNR No. MHSCA-20025292017**

M/s. H.P. Kharawala Plaintiff.

V/s.

Haridas Vishram & Co. Defendant.

**Coram : R.P. Deshpande,
Court Room No. 10
Date : 17/07/2018**

ORDER BELOW EXH-10 :

This is an application on behalf of defendant for condonation of delay caused in filing the written statement and to take the written statement on record.

2. It is contention of the defendant that, he have been served with a copy of summons somewhere on 01.02.2018. After receipt of the summons, he contacted his advocate Mr. Manoj Bhatt and had given instructions to file vakalatnama. Since the applicant was busy and preoccupied with his other commitments and was out of station for 20 days for business purpose from 06.02.2018 to 25.02.2018, the advocate for defendant was unable to file vakalatnama on the first date i.e. 07.02.2018. He had filed memo of appearance and matter got adjourned to 03.03.2018 for filing written statement.

3. When the applicant contacted advocate on 01.03.2018 for giving instructions to prepare written statement, the applicant came to know that the advocate was busy and preoccupied with his other commitments, on 03.03.2018 only vakalatnama was filed. Somewhere in the second week of March, when applicant approached to the advocate, he came to know that

advocate had gone out of station for a week. Thereafter immediately applicant contacted to advocate and gave instruction to prepare written statement where he informed to the applicant that there is delay in filing written statement and advised him to move an application for condonation of delay in the filing written statement. Accordingly applicant is filing present application for condonation of delay in filing written statement. There is delay of 40 days in filing written statement for the abovementioned reasons. It is just and necessary and in the interest of justice that the delay caused in filing of the written statement may be condoned and written statement of defendant may be taken on record. If the delay is not condoned as prayed, irreparable loss, harm and injury will be caused to the defendant which cannot be compensated in terms of money. If the delay is condoned, no harm and prejudice will be caused to the plaintiffs. Hence, it is prayed for condonation of delay in filing written statement

4. The other side has given say on the overleaf of the application and objected this application contending that the contents from the application are put to strict proof. The application is malafide and required to be dismissed with costs.

5. Heard learned advocates on behalf of both the sides

6. It is seen that the averments from the application that writ of summons served upon the defendant somewhere on 01.02.2018 is not disputed by the other side. There is no specific denial about the same. It is contended in the application that there is delay of 40 days in filing written statement. It is also seen that the plaintiff has filed RAD suit. The suit is of the year 2017. There is no specific denial on behalf of plaintiff about the contention of defendant that there is 40 days delay in filing written statement. Along with this application, the defendant has

filed written statement. Considering that rights of the parties are required to be decided by adjudicating the present suit, it is just and necessary to adjudicate the rights of the parties on merits at once for all. Considering the same, in my opinion, by imposing costs for causing delay for filing written statement by the defendant, in my opinion, the present application is required to be allowed. Hence, I proceed to pass following order.

: ORDER :

The application is allowed as follows :

1. The delay caused for filing written statement is hereby condoned on payment of costs of Rs. 500/- payable to the plaintiff
2. On payment of costs by the defendant on or before next date the written statement of the defendant be taken on record.

Mumbai
Date :17/07/2018

(R.P. Deshpande)
Judge, C. R. No. 10

Order dictated on : 17.07.2018
Order typed on : 18.07.2018
Order signed on : 18.07.2018

(R.P. Deshpande)
Judge, C. R. No. 10