

IN THE COURT OF SMALL CAUSES AT BOMBAY

Order below Exhibit-15

In

R.A.D. Suit No. 29 of 2018

[CNR No.MHSCA2-0034462017]

Prakash Bhagayya Samal

..

Plaintiff

Versus

1. Dr. Pratapsingh Pupala and 2 others ..

Defendants

Coram : R. P. Deshpande,
Judge,C.R.No.10
Date : 09.08.2018

ORAL ORDER:-

This is an application on behalf of defendant no.1 requesting for condonation of delay of 110 days for filing written statement and permitting him to file written statement.

In short, facts of the application are as under :

2. According to the defendant no.1/applicant, he received writ of summons on 17.02.2018. After receiving writ of summons and copy of the plaint, a letter dated 05.03.2018 was addressed by the advocate of the applicant to the advocate for the plaintiff for providing inspection of all the documents relied upon by the plaintiff in the plaint, the photo copies of which are annexed hereto.

3. Till this date the advocate of the applicant has not provided the inspection of the documents relied upon by them to the advocate of the applicant. The elder sister of the applicant namely Jayshree Pupala aged 68 years has been suffering from various ailments from last three to four months. The applicant is

only family member who looks after his elder sister as she is unmarried. As the applicant's sister is undergoing the treatment, it was not possible for the applicant to give the instructions to his advocate to finalise the written statement. There is delay of 110 days in filing written statement. It is required to be condoned and applicant may be allowed to file written statement. If the application is allowed, no harm and injury would cause to the plaintiff, whereas, if the delay would not be condoned, then same would cause irreparable harm, loss and injury to the applicant.

4. The other side has given reply on overleaf of the application contending that the application is false, frivolous, vexatious and not maintainable in the eye of law. There is no reason why such huge delay of more than 120 days has been caused in the matter to take the application. As per Order 8 Rule 1 of the CPC, sufficient reasons must be given to condone the delay. No medical certificate has been attached with the application to support the case. Hence, the plaintiff requested for rejection of the application with costs.

5. Heard advocates appearing on behalf of both the sides.

6. It is seen from the reply of the plaintiff and the averments from the application that writ of summons served upon the applicant on 17.02.2018 is remained unchallenged. It is also seen that, the defendant no.1 has filed present application 06.07.2018. It is seen that the present application is filed by the defendant no.1 after more than 110 days from the date of service of summons. The applicant has mentioned that his unmarried elder sister Jayshree who is of 68 years old suffering from various ailments from last 3 to 4 months and as there is nobody to look

after towards his elder sister and as she is going under treatment, it was not possible for the applicant to give instructions to his advocate to finalise the written statement, hence, the applicant could not file the written statement within time and there is delay of 110 days for filing the written statement.

7. Admittedly, the plaintiff opposed this application contending that reason is not satisfactory and no any medical certificate is attached with the application to support the averments from the application. Admittedly, the applicant has not filed any medical certificate or document to support his contention from the application that his elder sister Jayshree is suffering from various ailment and undergoing treatment. It is seen that, the plaintiff has filed present RAD suit. It is of the year 2018. The applicant along with present application has filed written statement. Through present suit, the rights of the parties are required to be decided. Admittedly, there is delay of near about 110 days to file written statement. In my opinion, in the interest of justice and for fair trial, the delay can be saddled by imposing costs upon the defendant for filing the written statement at belated stage. Hence, according to me, by imposing costs upon the applicant defendant no.1, the delay is required to be condoned and written statement of the defendant no.1 is required to be taken on record. Hence, I pass following order.

ORDER

1. The application is allowed as follows:
2. The delay of 110 days caused for filing written statement is hereby condoned on payment of costs of Rs. 1000/- (Rupees one thousand only) payable to the plaintiff.

2. On payment of costs, the written statement filed by the defendant no.1 be taken on record.

Mumbai

Date : 09/08/2018

(R.P. Deshpande)

Judge, C. R. No. 10

Order dictated and typed on :09.08.2018

Order signed on :09.08.2018

/home/steno10/ss/HHJ R.P. Deshpande/August Judgment 2018/ sgm