

CNR No.MHSCA20034812017

IN THE COURT OF SMALL CAUSES AT MUMBAI

Order below Exhibit - 27

In

R.A.D. Suit No. 59 of 2018

1. Smt. Vijaya Vinayak Ghag & Anr. Plaintiffs

V/s

1. Asha Vinayak Ghag & Ors. Defendants

Mr. Deepak S. Devkar : Advocate for the Plaintiffs.

Mr. R. M. Kumar : Advocate for the Defendants.

Coram:- N. H. Jadhav, Judge

C.R. No. 23

Date : 20/06/2018

Order :

1. This is an application filed by the Defendant Nos.1 and 2 for condonation of delay in filing the written statement.
2. Plaintiffs have given their say on application itself and resisted the application.
3. Heard Learned Advocates for both sides. I have gone through the record and proceeding of this matter. As per Order VIII Rule 1 of Code of Civil Procedure, 1908 the Defendant Nos.1 and 2 have to file the written statement within the period of 30 days from the date of receipt of the suit summons and the said time may be extended upto 90 days for the reasons to be recorded in writing. In this case the delay in filing written statement is beyond the period of 90 days.

4. It is not disputed that the Defendants were served with the suit summons on 06/02/2018 and present application came to be filed on 20/06/2018. Hence, there is delay of 104 days in filing the written statement. The Hon'ble Supreme Court in the case of **Kailash v/s Nanhku & Ors., 2005(2) Mh.L.J.775** laid down principle that Order VIII Rule 1 of Code of Civil Procedure and proviso thereto are directory and not mandatory. Written statement beyond the period of 90 days can also be taken on record. However, subject to exceptional circumstances occasioned by reasons beyond the control of the defendant and such extension was required in the interest of justice and grave injustice would be occasioned, if the time was not extended. Therefore, we have to see whether the Defendant Nos.1 and 2 have made out exceptional situation for condoning the delay in filing the written statement. Defendant Nos.1 and 2 contended that they were served with suit summons on 06/02/2018. Thereafter, defendants contacted their Advocate and got the statement ready. In the meantime, defendant No.1 was not well because of high blood pressure and defendant No.2 was also suffering from various ailments. In the month of April, 2018 defendant Nos.1 and 2 went to their advocate to finalize the written statement and in the month of May, 2018 the advocate of defendants was out of town. In these circumstances, there is a delay of 104 days in filing the written statement. The delay on the part of Defendant Nos.1 and 2 is not intentional or deliberate and if the delay is not condoned, Defendants will suffer great prejudice, harm injury. On the contrary, plaintiff submitted that no sufficient cause is shown by the Defendant Nos.1 and 2 to condone the delay.

5. Hon'ble Apex Court have laid down the principle that "the

provision of Order VIII Rule 1 of C.P.C. being in the domain of the Procedural Law, it has to be held directory and not mandatory. The provision does not deal with power of the court and also does not specifically take away the power of the court to take the written statement on record though filed beyond the time as provided for. The nature of the provision is procedural and it is not the part of substantive law. All the rules of procedure are the handmaid of justice. The language employed by the draftsman of procedural law may be liberal or stringent, but the facts remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of the participating in the process of justice.”

6. Therefore, considering the legal position, the grounds mentioned in the application of Defendant Nos.1 and 2 make out an exceptional cause. I, therefore, hold that Defendant Nos.1 and 2 have made out exceptional circumstances for condonation of delay in filing the written statement. Application therefore, deserves to be allowed. Hence, I pass the following order.

ORDER

1. The application Exh.27 is allowed.
2. Delay in filing the written statement by the Defendant Nos.1 and 2 is condoned.
3. The written statement of Defendant Nos. 1 and 2 be taken on record.

Date : 20/06/2018

**(N.H. Jadhav)
Judge, C.R. No.23**

Order typed on : 20.06.2018
Order checked and signed on : 20.06.2018