

IN THE COURT OF SMALL CAUSES AT MUMBAI

**ORDER BELOW EXH. 26
IN
R. A. D. SUIT No. 755 OF 2018**

M/s. C. C. I. Intertrade Pvt. Ltd.	..Plaintiffs
Vs.	
Sumer Builders	..Defendant

Coram : Deepak L. Bhagwat
Judge, C.R. No.12
Date : 29.11.2018

ORDER :-

1. Read the application and say to it. Heard Ld. Advocates on behalf of both the parties.
2. As the defendant failed to file written statement within stipulated period, by present application the defendant requested to condone the delay caused in filing the written statement and to accept the written statement on record.
3. The plaintiff resisted the application contending that no grounds are made out to condone the delay.
4. The Ld. Advocate on behalf of the defendant argued that the application discloses the reasons for delay in filing the written statement. She argued that as the interim notices were being decided, the defendant had also sought the inspection of documents from the plaintiff. Due to illness the defendant could not approach the Advocate hence, the written statement could not be filed within stipulated period. Therefore, she requested to allow the application.
5. On the other hand, Ld. Advocate on behalf of the plaintiff contended that no medical certificate is produced showing the contention regarding illness. No ground is made out to condone the delay. Therefore,

she requested to reject the application.

6. The application in para 3(a) to 3(k) contains averments regarding the proceedings of Court regarding the interim notice of injunction. True that, on filing of the suit the injunction notice was heard and decided on merits on 08.08.2018. But pendency of interim notice and hearing thereon cannot be a good ground to condone the delay. Despite pendency and decision of interim notice, the defendant could have filed the written statement. Further, the interim notice was decided on 08.08.2018. Thereafter, merely an application to grant stay to the order on injunction notice was filed which came to be decided on 11.09.2018. Same cannot also be a ground sufficient to condone the delay.

7. It appears that the defendant had issued a letter dated 12.09.2018 to the plaintiff to give inspection of the documents. However, since receipt of summons on 09.07.2018 till 12.09.2018 the defendant had not sought inspection of the documents nor taken any positive steps to file the written statement. I have already noted that pendency and hearing of interim notice cannot be a reason to condone the delay. Even if for a moment it is accepted that it could be a reason, the interim notice has been decided on 08.08.2018. Since then till 12.09.2018 i.e. for a month the defendant remained silent and did not take any steps. Regarding illness also, no medical certificate is produced alongwith the application. It is not the case of defendant that he had not approached the doctor for treatment of illness. The contention of the defendant is that the doctor had advised complete rest to him and therefore, he could not contact his Advocate. If it is so, the medical certificate ought to have been produced on record. But it is not so produced. As such, the contention regarding illness is also not acceptable. Thus, the only circumstance made out is that the defendant requested the plaintiff vide letter dated 12.09.2018 to give

the inspection of documents. It is worth to note that the defendant has filed present application on 10.10.2018 alongwith the written statement although the inspection of documents was not given. Thus, there are no satisfactory reasons in respect of delay of complete period but the reason in respect of delay of part of the period is made out. Still it may be considered that if the delay is to be counted from the first 30 days on service of summons, it is of about 63 days delay. If the delay is to be counted taking into consideration total period of 90 days from the date of service of summons, it is of about 3 to 5 days. Considering the reason in respect of the part of the period and the quantum of delay and in order to decide the matter on merits, it is just and proper to condone the delay subject to heavy costs. Hence, order as follows is passed.

:- O R D E R -:

1. The application is allowed as under.
2. The delay caused to the defendant to file the written statement is condoned and the written statement filed on behalf of the defendant be taken on record subject to costs of Rs. 3000/- (Rupees Three thousand only) to be paid by the defendant to the plaintiff.

Date : 29.11.2018

(Deepak L. Bhagwat)
Judge
C. R. No.12