

IN THE COURT OF SMALL CAUSES AT MUMBAI

ORDER BELOW EXH. 66
IN
R. A. D. SUIT No. 952 OF 2012

Indradevi S. Jain & Anr.

..Plaintiffs

Vs.

T. K. Mossa Haji KK Abdulla & Ors.

..Defendants

Coram : Smita S. Mane, Judge

C. R. No. 22

Date : 03.10.2024

ORAL ORDER -:

1. The defendant No. 1 has moved this application for condonation of delay in filing additional written statement.

2. It is contention of the defendant that his Advocate received copy of amended plaint on 19.03.2024. He further submitted that his Advocate has prepared additional written statement on his instructions. However, due to his business commitments it was not possible to get it notarized or affirmed. Thereafter, he had undergone cataract eyes surgery of both eyes. Accordingly, his doctor advised him complete rest. So delay of 118 days has caused and prayed to allow the application.

3. Plaintiffs by filing handwritten say submitted that defendant No. 1 has not given any sufficient cause to condone the delay Accordingly, he prayed for condonation of delay and taking his additional written statement on record.

4. The plaintiff by filing her handwritten say on overleaf resisted the application. It is stated that the application does not have any supporting document to show the delay. Accordingly, it is prayed to reject the application with costs.

5. Perused record. Heard both side.

6. On perusal of record it appears that the defendant No. 1 has moved application vide Exh. 66 for filing additional written statement on record. The plaintiffs have moved application Exh. 64 to carry out

amendment. The said application was allowed by order dated 19.03.2024. The plaintiffs have carried out amendment on same date. Since then matter was in the caption of filing additional written statement by defendant No. 1. However, he failed to file his additional written statement. According to defendant No. 1, he received copy of amended plaint on 19.03.2024. However, due to health issue and business commitments, he could not file his additional written statement. Defendant No. 1 has moved this application of 30.08.2024. Therefore, delay of more than five months have been occurred. Now defendant No. 1 intends to file his additional written statement. Considering the facts & circumstances of the case, fair opportunity needs to be given to defendant No. 1 to contest the suit by filing his additional written statement. If such opportunity is given by condoning delay, suit will be decided on merits and no serious prejudice will be caused to other side. As per principle of natural justice, no person shall be condemned unheard. At the same time, some costs needs to be saddled on defendant No. 1 for causing delay. Resultantly, I pass the following order.

:- O R D E R :-

1. Application Exh. 66 is allowed, subject to costs of Rs. 100/- (Rupees One hundred only) to be paid to the plaintiffs or deposit in Court, on or before next date.
2. After compliance costs, delay in filing additional written statement be condoned and permission is granted to take additional written statement of defendant No. 1 on record.

Date : 03.10.2024

(Smita S. Mane)
Judge, C. R. No. 22