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(CNR NO.MHSCA3-001122-2022)
IN THE COURT OF SMALL CAUSES AT MUMBAI
(BANDRA BRANCH)

ORDER BELOW EXHIBIT NO.15
IN
R.A.E. SUIT NO.435 OF 2022

Bimal Ramgopal Agarwal ... Plaintiff

Versus

1. Amritlal Motilal & Anr. ... Defendants

Shri. Khan Javed Akhtar, Learned Advocate of the plaintiff.

Shri. Nirav Barot, Learned Advocate of defendant No.1.

Coram : Shri. A. J. Fatale, Judge.
C.R.No.34 (BB).
Date : 16.09.2023.

ORAL ORDER :-

1. Perused the application, reply filed by C.A. of plaintiff and record.
2. Heard Advocate of defendant No.1.
3. Though sufficient opportunity were given to plaintiff, but he failed to argue the application. Hence, application is proceeded without argument of plaintiff.
4. Present application is filed by defendant No.1 for condonation of 180 days delay in filing present application and

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granting permission to file his written statement on record. It is contended in the application that writ of summons in the suit was served upon him on 18.10.2022. Advocate was briefed to draft and file written statement on his behalf, but unfortunately Advocate meet with an accident on 02.04.2023 and fractured fingers of his right hand and Advocate was unable to work for the period from April to June 2023 and unable to draft written statement. Defendant No.1 is heart patient and also suffering from diabetes and high B.P. He is only person in family earning for maintaining the family. Now, he has engaged another Advocate. No prejudice, loss and injury would be caused to plaintiff, if written statement of defendant No.1 is taken on record.

5. C.A. of plaintiff has filed reply vide Exhibit No.16 and opposed the application contending no grounds are mentioned in the application to withstand provision of Order 8 of the Code of Civil Procedure, 1908. No documentary evidence is filed by defendant No.1 to prove the contentions mentioned in the application. Other contentions mentioned in the application by defendant No.1 are denied by plaintiff. Lastly, he prayed for rejection of application with costs.

6. Defendant No.1 has to file written statement within 30 days, but there appears to be some delay for filing written statement on record. Present application is filed by defendant No.1 on 04.07.2023. Defendant No.1 has filed written statement along with present application. Application is filed on affidavit.

7. It is settled principle of law that provisions of Order VIII Rule 1 of the Code of Civil Procedure, 1908 are directory and not

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mandatory. In my opinion, opportunity requires to be granted to defendant No.1 to file written statement on record and contest the suit on merits even though he has filed application after elapse of period of 90 days, subject to imposing costs. Hence, I pass the following order:-

: ORDER :

1. Application is allowed, subject to costs of Rs.1,000/- payable to plaintiff or it be deposited in Court on or before next date.
2. Delay is condoned.
3. Written statement of defendant No.1 is taken on record.

Date : 16.09.2023

Order Dictated & Typed on
Order Checked & Signed on

: 16.09.2023
: 16.09.2023

(A. J. Fatale)
Judge, C.R.No.34(BB).