

CNR No.MHSCA2-000462-2018

IN THE COURT OF SMALL CAUSES AT MUMBAI

**ORDER BELOW EXHIBIT-35
IN
RAD SUIT No. 221 OF 2018**

1. Tejkumar Mathurdas Dikshit. Plaintiff

Versus

1.M/s. Kantilal Narbheram & Co. & Ors.Defendants

APPEARANCES:-

Shah Harita Milan, Ld. advocate for the plaintiff.

Barot D.A., Ld. advocate for the defendants.

**Coram : A.M. Kulkarni
Judge, C.R.No.17,
Date : 27th March, 2023**

ORAL ORDER :-

The defendant No.1 has filed the present application for condonation of delay in filing the written statement on record. Plaintiff has filed reply at Exh-36 and thereby strongly opposed the application.

2. Heard both the sides. I have gone through the record and proceedings.

3. After going through the record, it appears that, defendant No.1 was joined in the present suit by way of order dated 9.12.2021. In view of the said order, defendant No.1 was served with the suit summons on 25.7.2022. Defendant No.1 ought to have been filed written statement on record within the stipulated period. However, there is a delay of 144 days in filing of the written

statement. It is contended in the application that, he is 80 years old and not keeping well. Therefore, he could not make contact to his advocate to give instruction about filing of the written statement. Per contra, it is submitted on behalf of the plaintiff that, defendant No.1 has not explained the delay of each and every day beyond 30 days. Despite giving ample opportunities, defendant No.1 has deliberately avoided to file his written statement. Hence, application deserves to be rejected.

4. Considering the rival submissions, I am of the opinion that, it would be just and proper and in the interest of justice to grant one more opportunity to the defendant No.1. It is settled principle of law that every dispute between the parties shall be decided on merit by giving an opportunities. In a adversarial system, no party should ordinarily be denied an opportunity of participating in the process of justice dispensation. Delay caused can be compensated by imposing cost. Hence, I pass the following order:-

ORDER

1. The application is allowed subject to cost of Rs.1000/- (Rupees One Thousand only) to be paid to the plaintiff.
2. Written statement be taken on record after compliance of the Order.

Place : Mumbai
Date : 27th March, 2023

(A. M. Kulkarni)
Judge, C.R.No.17