

MHCC040083652018



**BOMBAY CITY CIVIL COURT, BORIVALI DIVISION AT
DINDOSHI, GOREGAON, MUMBAI**

**NOTICE OF MOTION NO. 3239 OF 2018
(CNR NO.:MHCC040083652018)
IN
S.C.SUIT NO. 3249 OF 2016**

The Bharat Co-Operative Bank (Mumbai Ltd.) ... Plaintiff

Vs.

Mr. Ravikumar Rajan Pandiyan & Ors. ... Defendants

Plaintiffs : Advocate Nilam S. Pawar.
Defendant No.1 : Advocate Dalvi.
None for others.

**CORAM: H.H.JUDGE SHILPA S.TODKAR
(C.R.NO.03)**

Date : 18th November, 2022.

ORAL ORDER

Present Notice of Motion No. 3239 of 2018 is taken out by defendant No.1 to set aside order dated 06.03.2017 by which the suit proceeded Ex-parte against defendant No.1 and to allow defendant No.1 to file his written statement on record.

2. According to defendant No.1 the summons was duly served upon him and he appointed advocate Mr. Amit Kasbe. However, the

said advocate was in Dubai for his personal work since form 04.03.2017. So he was unable to attend the date on 06.03.2017. So the advocate was out of station and due to his absence the Ex-parte order passed against defendant No. 1 on 06.03.2017 and there is delay of 395 days in filing written statement. Delay is not deliberate and intentional. No harm and prejudice would be caused to the plaintiff if the same is condoned. Hence this Notice of Motion.

3. Plaintiff filed reply and raised objection. According to plaintiff writ of summons in suit served upon defendant No.1 on 11.01.2017. On 24.01.2017 advocate caused his appearance for defendant No. 1. Hence, defendant No. 1 is aware about the pendency of suit since 11.01.2017. The reason for delay is not justifiable. Lastly, prayed for the dismissal of the Notice of Motion.

4. Heard Ld. Advocates for both side. Perused the Notice of Motion, Reply and Documents.

5. According to defendant No.1 there is 395 days delay for filing written statement on record. Record shows that writ of summons served upon defendant No.1 and defendant No. 1 appointed advocate on his behalf but his advocate was out of station and there is miscommunication between defendant No. 1 and advocate. So Ex-parte Order passed against defendant No. 1 on 06.03.2017.

6. Plaintiff has filed suit for recovery of money and perpetual injunction against defendants. Plaintiff sought the perpetual injunction against defendant No. 1. So to decide the matter on merits it is necessary to give opportunity to defendant No. 1 to appear in the

proceeding and to file written statement. So in the interest of justice it is necessary to set aside Ex-parte Order and to condone the delay for filing written statement subject to costs.

7. In the result, I pass following order.

ORDER

1. Notice of Motion No. 3239 of 2018 is allowed.
2. Ex-parte order dated 06.03.2017 passed against defendant No. 1 is set aside subject to costs of Rs. 5,000/- (Rupees Five Thousand Only). The costs be paid to the plaintiff on or before next date.
3. The delay for filing written statement is condoned.
4. The written statement filed by the defendant No.1 be taken on record subject to payment of costs.
5. Plaintiff is at liberty to file rejoinder.
6. Notice of Motion No. 3239 of 2018 is disposed off accordingly.

(Shilpa S.Todkar)
Judge, City Civil Court,
Borivali Division, Dindoshi, Mumbai.

Date : 18.11.2022

Date of direct dictated on Computer : 18.11.2022
Corrected on : 19.11.2022
Signed on : 21.11.2022

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL
SIGNED JUDGMENT/ORDER”

Date : 21.11.2022

Time : 11.20 A.M.

UPLOAD DATE AND TIME

B. S. Pandit

(Stenographer Grade-I)

NAME OF STENOGRAPHER

Name of the Judge (with Court room no.)	HHJ Smt. Shilpa S. Todkar (C.R.No.03)
Date of Pronouncement of JUDGMENT/ORDER	18.11.2022
JUDGMENT/ORDER signed by P.O. on	21.11.2022
JUDGEMENT/ORDER uploaded on	21.11.2022