

ORDERS ON IA NO.3

Application filed by the plaintiff seeking condonation of delay in production of the documents.

2nd plaintiff has deposed that the documents are referred in the plaint and are relevant to prove the contention. These prays to condone the delay in production of the documents.

Defendants, who is appearing in person filed detailed objection that proper reasons for not producing the documents earlier is not stated. That the 8th documents contains the forger signature of the plaintiff and prays to dismiss the application with cost and also prays to take appropriate legal action for forging the documents.

Heard from the counsel for the plaintiff and from the defendnat in person.

Following point arise for my determination.

“whether the delay in production of the documents be condoned?

My answer to the above point is in affirmative for the following.

REASON

2nd plaintiff has deposed that the documents are relevant and were referred in the plaint. But the defendant urges during the course of arguments that there is no reference of these documents in the plaint.

Further it was pointed out that the documents which are listed are not the produced nad exposes the copy of the list of documents provided to him. The list depicts some overwriting and concellation of certain documents, which final list is same as the one produced before the court, but not replica. Thus the defendant vehemently argues relying upon the civil rules of practice, where it is held that copy to be furnished to the other side must be the same as produced before the court. Though the formal would not be the same the contains of the list furnished before the court and to the defendant are one and the same.

It was further argued by the defendant that the session for on-production of the original needs to be set out the plaint, which is not found in the pleadings of the

plaintiff. Thus urges that unless and until the plaint is amended, depicting the cause for non production of original documents, the application should not be allowed.

Law always adheres in the interest of justice. The provision under code of civil procedure is made in respect of production of documents is only to enable the opponent to prepare proper defence whether documents produced along with the plaint are original or xerox would make no difference to the defendant, which makes no difference in preparing the written statement. But the apprehension of damages to those documents which furnished in original, would always be there, which may happen during the court of movement of files. Thus in order to avoid these, parties would produce xerox copies of the documents, which would make no deference in drafting of written statement . The non-production of original itself would not be the reason to amend the plaint as urged by the defendant. The court can not reject a document only of non noting the reason for non production of documents. In the interest of justice and to arrive to a proper conclusion by the plaintiff is absolutely necessary.

The defendant has in the objection sought for an enquiry under section 340 of CPC against the plaintiff and her counsel. The fact can be and only can be decided at later stage, and after evidence,. Thus, this version of defendant does not hold any water.

In this situation, holding that the documents are necessary for the case of plaintiff , above point is answered in affirmative and the following.

ORDER

AI No.3 filed by the plaintiff under Order VII Rule 14 of CPC is herewith allowed.

Delay in production of the documents is condoned.

For plaintiffs evidence, call on 27.03.2024

Senior civil Judge & ACJM, Karkala

Application is filed by the defendant No. 6, 8 and 9 seeking to set aside order placing them exparte.

It is deposed by defendant No.6, 8 and 9 that they were residing in Mumbai and could not contact counsel. Thus the delay and prays to allow the I.A.

Counsel for the plaintiff objects that there is inordinate delay and delay is not properly explain. Thus prays to dismiss the I.A.

Heard from the counsel for the plaintiff and defendants.

Following point arise for my determination.

“whether there are sufficient grounds made out to set aside order placing defendant No. 6, 8 and 9 exparte?”

My answer to above point is “affirmative” for the followings:

REASONS

Suit was filed in the month of December 2022 and summons were served in the month of March and May. Thus they have appeared nearly after 7 to 9 months.

Defendants have deposed that they were residing in Mumbai and could not contact counsel in time. Consequently, the reasons assigned appears genuine to them. The counsel for the plaintiff denies the averments that the reasons assigned is not proper. However when the parties have appeared even before, commencement of trial, No hardship would be caused to them. But the delay has definitely caused hardship in question of time.

Therefore, in my opinion, an opportunity needs to be provide to the defendants to continue with the case and on adhering the principles of natural justice of being heard. Thus the defendants No. 6, 8 and 9 needs to be saddle with nominal cost.

In view of the above circumstances and reasoning the following

ORDER

IA No. 6 filed by the defendants No. 6, 8 and 9 is herewith allowed with cost of Rs.300/-

Order placing defendant No. 6, 8 and 9 ex parte is set aside.

For WS of defendant No. 6, 8 and 9.

Call on 28.02.2024

Senior Civil Judge & ACJM, Karkala