

IN THE BOMBAY CITY CIVIL COURT AT GREATER BOMBAY

**NOTICE OF MOTION NO. 3159 OF 2014
IN
SHORT CAUSE SUIT NO. 3887 OF 2011**

Nesco Ltd.

.. Plaintiff

Versus

Anand Moolya

..Defendant

Mr. Shukla, Advocate for the plaintiff.

Mr. Chabukswal, Advocate for the defendant.

**CORAM : HIS HONOUR JUDGE SHRI V. V. PATIL
(C.R.NO.02)**

:: ORDER ::

[Delivered on 15th June 2015]

1] The defendant has taken out this notice of motion and prayed to condone delay of 685 days in filing written statement.

2] According to defendant the plaintiff has filed present suit for recovery of possession of suit premises from him. The defendant was served with the writ of summons on 18/07/2011. Thereafter he prepared written statement and served the same upon the plaintiff on 09/10/2012. Thereafter, due to enhancement of pecuniary jurisdiction, the present matter transferred to City Civil Court from the Hon'ble High Cour. It is stated that the defendant was unaware about the transfer of the suit from Hon'ble High Court to this court. As such he was not knowing about the date of hearing of the present suit in

this court. Due to which this court passed orders on 25/10/2012 and directed to proceed the suit of plaintiff without written statement. It is stated that the defendant was suffering from High Blood pressure and acute mental stress. He was under medical treatment. This was also one of the ground for not filing the written statement within stipulated period. It is stated that the important civil rights of defendant are involved in the suit and if the written statement is not taken on record the defendant would suffer irreparable loss. With these submissions the defendant prayed to allow the notice of motion.

3] The plaintiff filed reply to the notice of motion and strongly objected the same. It is stated that on 18/01/2012 the Hon'ble High Court has directed the suit to proceed ex-parte against the defendant. Unless and until the defendant set aside the order of ex-parte he is not entitled to file written statement on record. It is stated that the non filing of written statement within time was a deliberate and intentional act of defendant that too with a view to prolong the suit. It is stated that the submissions of defendant that he was suffering from High Blood pressure and acute mental stress is not supported by any medical evidence. Therefore, the same cannot be relied upon. It is stated that the defendant was participating in Suit No.2576/02 which is pending before Dindoshi court. He was also regularly attending the Appeal no. 2358/2011 before the Hon'ble Bombay High Court. As such there is no substance in the submission made by defendant that he was absent in this court due to his ill health. It is stated that the defendant was sheer negligent in defending the suit. As such the written statement as taken out by defendant cannot be taken on record.

4] It is also contended that there is delay of 1132 days in filing present written statement and defendant is misleading this court by saying that

there is only 685 days delay in filing written statement. With these submissions the plaintiff prayed to reject the notice of motion.

5] Heard both the sides. Following points arise for my determination and I record my findings thereupon as under for the reasons given below.

<u>Points</u>	<u>Findings.</u>
1] Whether the notice of motion as taken out by defendant deserves to be allowed ?	Yes.
2] What order ?	As per final order.

:: Reasons ::

Points No.1 :-

6] Both sides have placed on record written arguments. Plaintiff as well as defendant reiterated in their argument whatever contended by them in notice and motion and reply respectively filed thereupon. The plaintiff in support of his argument has relied upon **(2007) 6 SCC 420 R.N. Jadi Vs. Subhashchandra**, wherein the Hon'ble Apex Court held that while allowing filing of written statement beyond 90 days period, it is for the court to record reasons and to be satisfied that there was sufficient justification for departing from the time-limit fixed by Order 8 Rule 1 and the proviso thereto. He further relied upon **(2009) 3 SCC 513 Mohammed Yusuf vs. Fajj Mohammed**, wherein the Hon'ble Apex Court has laid down same principle as aforesaid.

7] I have considered the written arguments advanced by both sides and also gone through the law laid down by the Hon'ble Apex Court in the matter referred supra. The perusal of the documents placed on record by

defendant goes to show that the defendant had prepared written statement in the month of October 2012 and the same was served upon plaintiff. It is an undisputed fact that in the year 2012 so many matters were transferred from Hon'ble High Court to this court due to enhancement of pecuniary jurisdiction of this court. The contentions of defendant that he was unaware about the transfer of suit from Hon'ble High Court to this court and about listing of the suit for hearing in this court appears prima facie genuine. I say so because record indicates that after transfer of suit, notice was not served upon the defendant to appear in present matter. Order 8 Rule 1 as applicable to State of Maharashtra, written statement expected to be filed within four weeks from the date of the service of summon on the defendant with a further rider that after expiry of four weeks, no further adjournment should be granted except for reasons to be recorded in writing.

8] At the same time, let us take into consideration the law laid down by the Supreme Court in the case of Collector, Land Acquisition, **Anantnag and another V/s. Mst. Katiji and others** reported in **AIR 1987 Supreme Court 1353** setting down guidelines for the sub-ordinate courts as to its approach in dealing with such matters. The Hon'ble Supreme Court made it very clear that court should apply a law in a meaningful manner which sub-serves the ends of justice that being the life-purpose for the existence of the institution of the Courts. Hon'ble Supreme Court further observed that a liberal approach should be adopted by the court so as to facilitate to party to get their dispute resolved on merit completely and effectually.

9] Bearing in mind these principles, if the background of the matter is considered, then obviously substantial rights of the parties should be decided on its own merits, as such I am of the view that the written statement filed by

the defendant should be taken on record by allowing the notice of motion.
Hence order.

:: Order ::

- [a] Notice of motion no.3159/14 is allowed subject to costs of Rs.2000/-payable by defendant to plaintiff within one month from the date of passing of the order.
- [b] After payment of costs the written statement filed by the defendant be taken on record.

Date: 15/06/2015

**[V.V.PATIL]
Judge
City Civil Court, Mumbai**

“I affirm that the contents of this PDF file order are the same, word to word, as per the original order.”

Name of the Steno with post :- Mrs. M. S. Putta (H.G.Stenographer)

- Name of the Judge (with Court no.) :- Shri V.V.Patil, C.R.No.2
- Date of pronouncement of order :- 15/06/2015
- Order signed by the P.O. on :- 15/06/2015
- Order uploaded on :- 16/06/2015