



Summary Suit No.01/2022
Laxmi Vs. Vilas
CNR-MHLA120042032022

ORDER BELOW EXH.11

1. The defendant has filed the present application under Order 37(3)(5) of Civil Procedure Code to grant leave to defend the suit.
2. It is contended by the defendant that plaintiff has filed false suit against him, therefore, it is necessary to grant permission to contest the suit by filing say. He has submitted several grounds in his application and requested to grant permission to contest the suit, if the permission is not granted he will lose the opportunity to contest the suit on merit. Therefore, he requested to grant permission.
3. The plaintiff has filed his say and submitted that defendant served suit summons on 24/01/2023 and as per law within 10 days after the service of summons it is necessary to file application of leave to defend before the court. The contents in the application are totally false. The application is filed beyond the period of limitation, therefore, leave to defend cannot be granted to defendant. He denied all the material allegation against her and requested to reject the application.
4. I have heard the Ld. Advocate for both sides.
5. Perused the application and record, it appears that the present suit is summary suit. As per Order 37 deals with a

procedure in respect of summary suit. As per Rule 3 of Order 37, after service of summons, defendant may at any time within 10 days of such service, enter and appearance. The defendant may at any within 10 days from service of summons may apply to such summons for leave to defend such a suit and leave to defend may be granted to him unconditionally or upon such a terms such may appears to the court to be just. However, court can refused leave to defend if the court is satisfied that fact disclosed by the defendant do not indicate that, he has substantial defence to raise or that the defence intended to be put up by the defendant is frivolous or vexatious.

6. On perusal of record it appears that suit summons served on defendant on 24/01/2023 and he appeared before the court on 30/01/2023. On 30/01/2023, he filed adjournment to file w.s./say. On that day no any application moved from the defendant for leave to defend the suit. Thereafter, on 06/02/2023, the present application with a prayer leave to defend the suit filed by defendant. Admittedly, on 24/01/2023 defendant served suit summons and within 10 days he has not sought permission to leave to defend. This application is filed beyond the period of limitation i.e. after 10 days. Defendant failed to prefer leave to defend application within limitation as enumerated in Order 37 Rule 3. The application is filed beyond the period of limitation. No any single reason mentioned in the application for delay. No any application to condone the delay filed on record. The application is filed beyond the period of limitation is not maintainable in the eye of law. Therefore, the application is liable to be rejected and

permission to leave to defend the suit cannot be granted after expiry of stipulated period. Hence, I pass the following order;

ORDER

Application is hereby rejected.

Date : 06/03/2023

(**N.A.L. Shaikh**)
2nd Jt. Civil Judge J.D. Nilanga.