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ORDER BELOW EXH. 12 IN S.C.S. No. 11/2018
(CNR NO. MHST05-000582-2018)

This is an application filed by defendant Nos. 1 to 3 seeking delay condonation in respect of leave to defend the suit.

02. According to defendant nos. 1 to 3 the present suit is filed for recovery of amount under Order 37 of Civil Procedure Code. On 31-08-2018 defendants were served with suit summons. However, defendant no.1 is partnership firm wherein defendant No. 2 is the Managing Director and defendant No. 3 is the President. During that period the defendant No. 2 being the manager had gone to Mumbai and Pune. He was not acquainted with the knowledge of law. Hence, he gave the summons to advocate on 18-09-2018. At that time the defendants had knowledge about the summons under Order 37 Rule 2 of Civil Procedure Code. It was necessary to file Vakalatnama and seek leave to defend the suit within 31-08-2018 to 10-09-2018. The present application was filed on 21-09-2018 after period of 11 days. Hence, the defendants have filed present application seeking delay condonation in respect of leave to defend the suit.

03. The plaintiff has filed its say at Exh. 18. According to them, the present application is not maintainable. The lack of knowledge of law cannot be the ground for delay condonation. It is denied that the defendants gave summons to the advocate on 18-09-2018. The present suit is a summary suit. Hence, delay cannot be condoned. The leave to defend the suit should

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be filed within 10 days. With this contention plaintiff prayed to rejection of application.

04. Perused record. Heard learned advocate for the plaintiff. Defendants in spite of opportunities failed to argue on the present application. Hence, application proceeded on merit. The present suit is a summary suit filed by plaintiff under order 37 of Civil Procedure Code. for recovery of amount of Rs.87,51,433/- from defendants. The suit summons under Order 37 Rule 2 was served on defendants on 31-08-2018 as per Exh. 6. Thus, it was the duty of the defendants to appear within 10 days from the service of summons and seek leave to defend the suit i.e. between 31-08-2018 to 10-09-2018. However, the defendants failed to appear and seek leave to defend the suit within the period of 10 days.

05. In the case in hand the defendants have given the explanation for the delay caused stating that on 19-09-2018 there was boiler function of defendant Sugar Factory for the year 2018-19. During that period i.e. 31-08-2018 to 18-09-2018 the Manager had gone to Mumbai and Pune for repairing work of boiler. So also, the Manager had no knowledge of law and in respect of procedure of summary suit. Thus, the ground mentioned in application is sufficient and reasonable for condonation of delay in respect of leave to defend. On the other hand, in view of legal position in **Bimalkuma S/o, Awadheshprasad Singh Vs. H.D.F.C. Ltd. reported in 2018 (6) Mh.L.J. 140**, it was held that opportunity can be granted to

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defendant to make an application under Order 37 Rule 3(5) of Civil Procedure Code. for delay be excuse. Thus, in case in hand as there is sufficient and reasonable ground made out by defendants that the delay can be condoned subject to imposing certain costs be paid to plaintiff. In the result, I proceed to pass following order :-

ORDER

01. The application is allowed subject to costs of Rs.2000/- be paid to plaintiff.
02. In case, defendants failed to pay the costs by next date, the aforesaid order stands vacated.

Date :- 11.12.2018.

(R. T. Ghogle),
3rd Jt. Civil Judge S.D., Karad.