

MHST160013102018

**Order Below Exh.59 in R.C.S. No.87/2018****(Sanjeev Rajanprasad Shrivastav Vs. The
Head HR Garware Wall Ropes Ltd Pune
and ors.)**

This is an application filed by defendant to condone the delay for filing review application.

2. Through this application defendant submitted that this is the suit for mandatory injunction that to resume and reinstate defendant in their company's service with immediate effect. Defendant appeared and file his written statement at exh.14. Issues are framed at exh.26 on 05.02.2021. The matter is fixed for hearing.

3. Defendant submitted that plaintiff has filed an application for amendment at exh.42. Plaintiff has filed amended plaint. On 29.09.2023 plaintiff has given evidence close pursis. Defendant gave an application at exh.45 for change of his counsel and at exh.48 he gave an application for amendment in written statement. Said application is rejected on 23.04.2024.

4. Defendant further submitted that the review application has been filed by defendant on 28.06.2024. Said application must be filed on 23.05.2024. But due to summer vacation he could not be filed the said application within limitation. The matter was fixed for 11.06.2024. But on that day defendant could not filed review application. On next date he filed review application. There is delay of 35 days to file review application. Hence he prayed that said delay must be condone to file review application.

5. Per contra plaintiff has filed his say at exh.61 and resisted the application. He contended that the application and prayer is not legal. Defendant had already filed the application for review. Hence, there is

no question no condone the delay of 35 days. Section 5 of Limitation Act is not applicable in this matter. The review application was heard and kept for order. Defendant know the condition of plaintiff. Hence, the application may be rejected with cost under Section 35A of C.P.C.

6. Following points arise for my determination. I have recorded my findings thereon for the reasons to be discussed hereinafter.

Sr. No.	Points		Findings
1	Whether defendant is entitled to condone the delay as prayed?	...	No.
2	What order?	...	As per final order.

REASONS

POINT NOS.1 and 2 :-

7. I heard advocates of both parties. Perused the record of the case. Perused documents submitted by plaintiff. Ld. Advocate of defendant has filed written argument at exh.62. He reiterate the contents of application 59 as it is. Learned advocate of defendant has relied on following authorities--

1. **Shaikh Chand S/o Shaikh Ahmed, died thro. Lrs Vs. Zaitunbee w/o Shaikhlal (Aurangabad) in writ petition no.10439/2015**
2. **Smt. Chhaya w/o Dattatray Aurangabadkar (Dead) thro, Lrs. Vs. Shri. Waman s/o Pundlik Bhaje (Nagpur) in Civil Application no. 1473/2015.**
3. **Basawaraj & Anr. Vs. The Spl. Land Acquisition officer, AIR 2014 (SC) 746**

8. I have gone through the authorities. But defendant has filed delay condonation application after filing review application.

9. Per contra learned advocate of plaintiff has argued that law of limitation was founded on public policy. He cited maxim interest “reipublicae ut sit finis litium” He also argued that the court has no power to extend the period of limitation on equitable ground. There is no sufficient cause for not preferring the review application within prescribed period. According to Section 3 of Limitation Act there is use of word shall. Hence it is the duty of court to do substantial justice.

10. According to section 5 of Limitation Act 1963, any application under any provisions of Code of Civil Procedure 1908, may be admitted after the prescribed period, if the applicant satisfies the Court that he had sufficient cause for not preferring the application within such period.

11. On perusal of record of the case, it is seen that the application to condone delay is filed after filing review application. Defendant has already filed review application at exh.55. There is no provision to condone delay after filing review application. Hence, this application is not maintainable. Considering above discussion, I answer point no.1 is in negative. For answer point no.2, I pass following order:

ORDER

The application is rejected.

Date:18.10.2024
Place: Wai

(S. S. Palsule)
3rd Jt. Civil Judge Jr. Dn. Wai.