

IN THE COURT OF SMALL CAUSES AT MUMBAI

**ORDER BELOW EXH. 20
IN
R. A. D. SUIT No. 1235 OF 2018**

Deepak A. Nagdev ..Plaintiff
Vs.
Bank of India & Anr. ..Defendants

Coram : Deepak L. Bhagwat
Judge, C. R. No.12
Date : 30.01.2019

ORDER :-

1. Read the application and say to it. Heard Ld. Advocates on behalf of both the parties.
2. As defendant No. 1 failed to file the written statement within stipulated period of 30 days from the date of service of summons, by present application defendant No. 1 requested to condone the delay caused in filing the written statement.
3. The plaintiff resisted the application. It is argued that no sufficient cause is given to condone the delay. The contents in the reply to temporary injunction application are in detail and it cannot be accepted that additional time was required to file the written statement. Therefore, Ld. Advocate on behalf of the plaintiff requested to reject the application.
4. Admittedly, summons has been served on defendant No. 1 on 14.10.2018. Defendant No. 1 as of right was entitled to file written statement on or before 14.11.2018 i.e. within 30 days from the date of service of summons. However, the written statement is filed with present application on 11.01.2019. Thus, there is about 58 days delay from the completion of 30 days from the date of service of summons. However, still the written statement is within 90 days from the date of service of summons. The broad reasons mentioned in the application are that after

receipt of summons and instructions to the Advocate to appear, time was required to give instructions to prepare the written statement. Meanwhile reply to the temporary injunction application was filed. However, written statement could not be filed, as it required more instructions. The defendant being a bank it had to discuss the case with various Authorities and then only can decide to further instruct the Advocate. Thereby delay was caused to file written statement.

5. The reasons as mentioned in the application are well supported by solemn affirmation. True that, reply to injunction notice has been filed. It may be that it is in detail. But a party cannot be forced to treat the reply as written statement. The reply to temporary injunction application stands on different footing from that of the written statement. The reply to temporary injunction application is limited to the preliminary enquiry proceeding, whereas the written statement must contain all the material facts constituting the defence of the defendant. Thus, although the reply was filed on record, it cannot be said that the defendant was not required further instructions for filing of written statement. It is not disputed that the defendant is a public sector undertaking that is a bank. It is of common knowledge that it being an artificial personality may require approvals from various superior officers regarding filing of the written statement, the defence of the written statement etc.. Considering these circumstances, some concession must be given to the defendant. Thus, the reasons as given on behalf of the defendant are satisfactory and sufficient to condone the delay. Further in order to decide the matter on merits, it is just and proper to accept the written statement on record. Imposition of costs will be appropriate order for the delay caused. In these circumstances, order as follows is passed.

:- O R D E R :-

1. The application is allowed as under.

2. Delay caused to defendant No. 1 to file the written statement is condoned and written statement of defendant No. 1 annexed to the present application be taken on record, subject to costs of Rs. 800/- (Rupees Eight hundred only) to be paid to the plaintiff.

(Deepak L. Bhagwat)
Judge
C. R. No.12

Date : 30.01.2019