

**IN THE BOMBAY CITY CIVIL COURT AT BOMBAY
BORIVALI DIVISION, DINDOSHI (BRANCH)
NOTICE OF MOTION NO.1381 OF 2018
IN
SUMMARY SUIT NO. 630 OF 2017**

EURO PANEL PRODUCTS PVT. LTD., **...Plaintiff**

V/s.

GUNJAN BROKER PROP. MARS TECHNOLOGIES **...Defendants**

Advocate Pooja Chaurasia for Plaintiff.

Advocate R.R. Sharam for Defendant.

**CORAM: His Honour Judge
Shri Mahesh S. Lone
(C.R.No.5)**

DATE : 26th June, 2019

ORAL ORDER

1. This notice of motion is taken out to condoned the delay of 170 days to file leave to defend.
2. Heard learned counsel for the defendant and learned counsel for the plaintiff.
3. The following points arise for my determination. The points and determinations are as under :-

	POINTS	DETERMINATIONS
1	Whether there is sufficient cause to condone the delay of 170 days for filing to leave to defend ?	Yes
2	What order ?	As per final order.

REASONS**AS TO POINTS 1 AND 2**

4. The learned counsel for the defendant has submitted that, the defendant's father was suffering from various ailments and was on completely bed ridden since last more than 15 years and was taking treatment at home. The Summons for Judgment was served on 4/9/2018 but due to the ailment of his father and being only son of his father, the defendant was unable to file leave to defend within time. Ultimately, the father expired on 16/2/2018. Therefore, he prayed for condonation of delay in filing leave to defend.

5. The learned counsel for the plaintiff has resisted this application by filing say below this application. The learned counsel has submitted that the delay of 170 days are not explained by the defendant. Therefore, application be rejected.

6. It is undisputed that the defendant served Summons for Judgment on 4/9/2017. The defendant was excepted to file leave to defend on/or before 14/9/2017. It is also undisputed that there is delay of 170 days in filing leave to defend. The copy of death certificate of father of the defendant is annexed to this notice of motion. It shows that on 16/2/2018 father of the defendant was expired, though there are no documents on record to show that the father of the defendant was bed ridden. However, without taking any hyper-technical view and giving a chance to the defendant to contest his claim, it will be just and proper to allow this application. The delay can be compensated in terms of money. Therefore, point No.1 is answered as "Yes" and following order is passed.

ORDER

- 1) Notice of Motion No.1381/2018 is hereby allowed.
- 2) The delay of 170 days to file leave to defend is condoned subject to cost of Rs.1500/- which is to be paid to the other side.
- 3) On payment of cost, the leave to defend is to be taken on record and given exhibit number.
- 4) If the defendant fails to pay the cost, the said order would stand canceled automatically without reference to the court.
- 5) Notice of Motion No.1381/2018 is disposed off accordingly.

26/06/2019

**(Mahesh.S. Lone)
Judge,
City Civil Court,
Dindoshi, Mumbai.**

Date of dictation : **26/06/2019**

Date of transcription by steno: **01/07/2019**

Date of order signed by HHJ : **12/07/2019**

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER.”

12/07/2019 12.38 pm
UPLOAD DATE AND TIME

Mr. P. V. Thorat
NAME OF STENOGRAPHER

Name of the Judge (With Court Room No.)	H.H.J.Shri Mahesh S. Lone, Court Room No.5
Date of pronouncement of Judgment/Order	26/06/2019
Judgment/Order signed by P.O. on	12/07/2019
Judgment/Order uploaded on	12/07/2019