

IN THE COURT OF SMALL CAUSES AT MUMBAI

**ORDER BELOW EXHIBIT -16
IN
R.A.D. SUIT NO.1480 OF 2019**

(CNR No.MHSCA2003043-2019)

Mohammed Hashim Abdul Hakim Ansari) Plaintiff.

Versus

Abdul Razzak A.K. Fitwala) Defendant.

Learned Advocate for Plaintiff : Mr. Ashok R. Pande
Learned Advocate for Defendant : Basudkar Sanjay M.

**Coram : Rutuja S. Bhosale,
Judge, C. R. No.20
Date : 26.09.2024**

ORAL ORDER :-

This application is filed by the defendant to condone the delay in filing the written statement.

2. Defendant states that, he has another matter i.e. Execution Application 574 of 2019 in C. R. No. 20. When he came to appear in the said execution application and was checking the daily board, he found out about the present suit shown in the board against his name. After the checking the entire status on the e-court app he came to know that order has been passed against him on 30.06.2022 to proceed without his written statement.

3. Defendant states that, thereafter he came to the court and check the papers and proceedings and came to know that suit summons has been served upon him by pasting the summons on the outer door of his office premises. On the particular date of pasting he was out of Mumbai for two weeks for his personal works. When he returned to Mumbai and opened his office he did not find any papers like summons pasted on the outer door. The defendant has doubt that, after pasting the summons the plaintiff may with malafide intentions removed said the copy from the door of office premises. Defendant came to know about the present suit on 10.01.2024 when he came for his another matter. Therefore, the order dated 30.10.2022 passed against him needs to be set aside and his written statement be taken on record.

4. Plaintiff has filed reply at Exh. 17 stating that the defendant has not given any reason or logical explanation for condoning the delay. The defendant has filed RAE Suit No. 1327 of 2021 against the plaintiff in which plaintiff has filed his written statement on 10.02.2022 in which the plaintiff has nearly pointed out that he has filed the present suit therefore the contention of defendant that he was not aware about filing of the present suit cannot be accepted. So also after three attempts by the bailiff when the defendant could not be served being not available and after being satisfied by the report of the bailiff, the court had allowed the application of pasting of the summons. Proper service was done by bailiff on defendant as no case is made out by the defendant application be rejected.

5. Heard both the learned advocates. The record shows that

order has been passed against the defendant on 30.10.2022. according to defendant he came to know about the present suit for the first time on 10.01.2024. the present application is taken out on 20.01.2024. the defendant has made out sufficient cause for not able to appear in the present matter and filed his written statement within time therefore it is necessary to give an opportunity to the defendant to raise his defence. Accordingly following order is passed.

: ORDER :

1. Application is allowed subject of costs of Rs.4000/- to be paid to plaintiff on or before next date or deposited in Court if plaintiff is not available.
2. If the costs is deposited in the Court, the plaintiff is entitled to withdraw the same.
3. Order dated 30.06.2022 is set aside and delay is condoned subject to compliance.

Dt: 26.09.2024

**[Rutuja S. Bhosale]
Judge,
C. R. NO. 20**

order dictated on : 26.09.2024
order checked & signed on : 26.09.2024