

IN THE HIGH COURT OF JUDICATURE AT MUMBAI  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2791 OF 2016

(The Cosmos Co-operative Bank Limited Vs. The Kapol Co-operative Bank Limited and others)

**Office Notes, Office Memoranda of Coram, appearances, Court's orders, or directions, and Registrar's Orders**

**Court's or Judge's orders**

Ms Varsha Palav for Petitioner.

**CORAM : R. G. KETKAR, J.**  
**DATE : 04<sup>TH</sup> MARCH, 2016**

**P.C.:**

Heard Ms Palav, learned Counsel for petitioner.

2. By this Petition under Article 227 of the Constitution of India, petitioner has challenged the judgment and order dated 16.11.2015 passed by the learned Judge presiding over Court Room No.28 of the Bombay City Civil Court, Mumbai in Notice of Motion No.2523 of 2014 in Summary Suit No.9302 of 1994. By that order, the learned trial Judge allowed the Notice Motion taken out by respondent No.1-plaintiff for condoning the delay of 4 years and 3 months in filing summons for judgment.

3. Ms Palav submitted that in view of Rule 119(4) of the Bombay City Civil and Sessions Court Rules, 1948, if the summons for judgment is not taken out within 6

months, the Suit has to be dismissed. She relied upon the decision of this Court in the case of *Union Bank of India Vs. M/s. J. Raj and Company, 2009 (3) Mh.L.J. 256*, which considered Rule 227 of the Bombay High Court (Original Side) Rules. She submitted that Rule 227 of the Bombay High Court (Original Side) Rules and Rule 119(4) of the the Bombay City Civil and Sessions Court Rules, 1948 is *pari materia*. She further states that tomorrow i.e. 05.03.2016 is the next date of hearing before the trial Court.

4. In view of these submissions, issue notice to the respondent No.1, being the original plaintiff, returnable on 23.03.2016. Notice to indicate that subject to the time constraint and convenience of the Court, Petition will be disposed of finally at the stage of admission. Notice to further indicate that despite service if respondent No.1 fails to appear, Court will proceed to decide the Petition on its own merits.

5. In the meantime, there shall be ad-interim order in terms of prayer clause (c).

**(R. G. KETKAR, J.)**