

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4219 OF 2015

|                             |    |            |
|-----------------------------|----|------------|
| Evaluationz India Pvt. Ltd. | .. | Petitioner |
| VS.                         |    |            |
| DGTL Media Pvt Ltd.         | .. | Respondent |

Mr. Rohan Tanna h/f. Ms Kirti M. Tanna for Petitioner.  
Ms Sujata Meleka i/b. Dholakia Law Associates for Respondent.

**CORAM : M. S. SONAK, J.**  
**DATE: 24 APRIL 2015**

**P.C. :-**

1] Rule. With the consent of and at the request of the learned counsels for the parties, Rule is made returnable forthwith.

2] This petition challenges order dated 24 March 2015, by which the learned City Civil Court has declined to condone delay of 85 days in filing application for leave to defend. The cause, which prevented the petitioner from filing application for leave to defend has been set out in the affidavit in support of the chamber summons. The cause indicated is that the petitioner is a company based in Bangalore and therefore had to approach their Advocate in Bangalore. It is stated that the Advocates in Bangalore were not familiar with the processional requirements as applicable in the City Civil Court at Bombay. Thereafter, the petitioner made attempts to engage Advocates in Mumbai and some time was spent in the

process. The affidavit also indicates instances of communication gaps between the officers of the petitioner company and series of Advocates contacted for the purpose of advise and defence.

3] Upon examining the cause shown, although it can be said that the petitioner ought to have been more diligent in the matter, this is certainly not a case where the cause shown can be stigmatized as malafide or for the purpose of unduly prolonging the proceedings. In matters of condonation of delay there is bound to be some lapse on the part of the party concerned. However, that by itself is not a ground to shut out such party from seeking leave to defend the proceedings. Upon overall considering the averments in the affidavit, sufficient cause has been made out by the petitioner and the delay of 85 days can be condoned subject to payment of costs by the petitioner.

4] The learned counsel for the respondent however pointed out that in the chamber summons, the petitioner has not applied for any condonation of delay in filing the vakalatnama, which was the basic step required in the matter. The learned counsel for the respondent is right in her submission. However, such error is no reason to decline condonation of delay. Further, such error does appear to be inadvertent.

5] Accordingly, the impugned order is set aside. The delay of 85 days in filing the vakalatnama is condoned. The vakalatnama may accordingly be taken on record. All this is subject to the petitioner paying costs of Rs.10,000/- to the respondent. Such costs may be paid to the respondent within a period of two weeks from today. If such costs are paid and necessary receipt / evidence is produced before the learned City Civil Court Judge, the petitioner be permitted to file vakalatnama in the matter.

6] Rule is made absolute to the aforesaid extent. There shall be no separate order as to costs in this petition.

**(M. S. SONAK, J.)**

Chandka