

**FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
ORDINARY ORIGINAL CIVIL JURISDICTION.**

**NOTICE OF MOTION NO. 1936 OF 2015
IN
SUMMARY SUIT NO. 76 OF 2015**

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Prothonotary's orders	Court's or Judge's orders
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Mr. Sandip Kumar for applicant/ defendant nos. 1, 2 and 4.

Mr. Mukesh Mishra i/b Haresh Lulia for the respondent /Plaintiff.

CORAM : K. K. TATED, J.

DATED : 10/12/2015.

PC.:

. Heard learned Counsel for the parties.

2 This motion is preferred by defendant no.2 to allow them to file their Affidavit-in-Reply in Summons for Judgment no. 26 of 2015.

3 The learned counsel for the applicant/defendant submits that in the present proceeding, earlier they appointed Adv. Mr. Lalit B. Nair to take appropriate steps. The earlier Advocate assured the applicant/defendant that he would prepare and file written statement within time. As the earlier Advocate failed to do so, they appointed the present Advocate. At that time, the present

Advocate informed the defendants that instead of written statement, they have to first file Affidavit-in-Reply to the Summons for Judgment. Hence, the delay in filing their Affidavit-in-Reply to leave to defend the summary suit. He submits that because of the mistake on the part of the Advocate, the litigant should not suffer.

4 On the other hand, the learned Counsel Mr. Mukesh Mishra appearing on behalf of plaintiff vehemently opposed the present Notice of Motion. He submits that the applicant/defendant failed to show sufficient cause for condonation of 16 days delay in filing leave to defend. They filed their Affidavit-in-Reply dated 07.12.2015.

5 The learned counsel for the plaintiff submits that as the applicant/defendant failed to show sufficient cause for condonation of 16 days delay, there is no question of allowing the present Notice of Motion.

6 I heard both the sides at length. It is to be noted that in the present proceeding, earlier the applicant defendant appointed Adv. Mr. Lalit B. Nair who assured the defendant that he will take appropriate steps for filing the leave to defend the suit as well as the written statement. As he failed to do so, they appointed the present Advocate.

7 Considering the fact that because of mistake

on the part of Advocate, the litigant should not suffer and the reasons disclosed by the applicant in their affidavit-in-support of Notice of Motion, I am satisfied that applicant has made out case for allowing this Notice of Motion.

8 Hence, following order.

a) Delay in filing leave to defend i.e. affidavit-in-reply of Summons for Judgment no. 26 of 2015 is condoned.

b) Applicant/defendant No.2 to file their Affidavit-in-Reply in Summons for Judgment no. 26 of 2015 on or before 18.12.2015 and serve copy on other side.

c) Notice of Motion stands disposed of accordingly.

(K.K.TATED, J.)