

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**NOTICE OF MOTION NO. 1558 OF 2015
IN
SUIT NO. 2830 OF 2006**

General Pigment and Chemical Products
Pvt. Ltd. and anr.

... Applicants
(Ori.Defts.)

In the matter between

The Official Liquidator, High Court, Bombay
Through New Haven Steel Ball Corporation
Pvt. Ltd.

... Plaintiff

vs.

Laxman Ukardaji Shegaonkar & ors.

... Defendants

Ms. Madhu Hiraskar i/by Chitnis Vaithy & Co., Advocate for the
applicants / original defendants No.1 to 4.

Mr. Devang, Advocate for the Official Liquidator / original plaintiff.

Coram : Smt. R. P. SondurBaldota, J.

Date : 20th October, 2015.

P.C.

1. Defendants No.3 and 4, against whom the suit is directed to be heard ex-parte have taken out this Notice of Motion for (i) condonation of delay of 2,352 days in filing their written statement, (ii) permission to file written statement to contest the suit and (iii) to set aside the order dated 1st December, 2014 directing the suit to be listed under the caption of undefended suits.

2. The Notice of Motion is dated 11th September, 2015. Earlier, these defendants had taken out another Notice of Motion being Notice of Motion (L) No.849 of 2015, which was lodged on 8th March, 2015. They withdrew that Notice of Motion on 27th July, 2015 with liberty to take out the present Notice of Motion. As per the earlier Notice of Motion, the delay in seeking leave to file written statement was only of 72 days, calculated from 1st December, 2014.

3. The affidavit-in-support of the present Notice of Motion sets out two reasons for failure to file written statement within time. The first reason stated at para 4 is that the name of the advocate was not shown on the board when the suit appeared on the board from time to time. This was because the Vakalatnama on behalf of these defendants had remained to be filed in the Court office. According to these defendants, they had duly signed the Vakalatnama which was handed over to the clerk of the advocate for filing in the office of the Court. However, due to inadvertent lapse on the part of the clerk, the Vakalatnama was not filed. The second reason stated at para 5 of the affidavit-in-support of the Notice of Motion is that the advocate for these defendants was not aware of the date of listing of the matter before the Prothonotary and Senior Master, due to which, no written statement could be filed at the relevant time. According to these defendants, their

written statement is now ready and can be filed in the Court at any time.

4. The averments made in the affidavit-in-support of the Notice of Motion, as regards the causes set out therein are vague and without necessary particulars. The affidavit is silent as regards the details of the date, month and year in which the Vakalatnama was signed by these defendants and handed over to the clerk of their advocate. The name of the clerk of the advocate is not disclosed by them. Perusal of the affidavit-in-support of the earlier Notice of Motion taken out by these defendants and the affidavit-in-support of the present Notice of Motion shows that they are identical in every respect including the cause set out therein. Though the delay stated in the present Notice of Motion is for a far larger period the explanation for that delay does not differ from the explanation set out for the shorter period. One fails to understand as to how the reason set out for the condonation of delay of 72 days can be same for explaining the delay of 2,352 days. It must, therefore, be held that there is no cause shown for the period prior to 72 days from 18th March, 2015. Thus, these defendants have not made out any case for condoning the inordinate delay in filing the written statement.

5. The Notice of Motion is dismissed, with costs.

[Smt. R. P. SondurBaldota, J.]