

Mr. Ajit Kenjale for Petitioner.
Dr. Firoz Dadabhai Satarwala, Respondent in person present.

P.C. :

Heard Mr. Kenjale, learned Counsel for petitioner and Dr. Firoz D. Satarwala, respondent in person at length. Rule. Dr. Firoz Satarwala, respondent in person, waives service. At the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

2. By this Petition under Article 227 of the Constitution of India, petitioner has challenged the order dated 28.11.2014 passed by the learned trial Judge. By that order, the learned trial Judge rejected the application made by the defendant for condoning the delay of 92 days in filing the written statement. While rejecting the application, the learned trial Judge observed that applicant has to explain each and every day's delay. Defendant has not filed documentary proof about his illness and the application is filed after the filing of affidavit of evidence by the plaintiff.

3. Mr. Kenjale submitted that along with the application for condonation of delay, defendant has filed the written statement. Having regard to the number of days delay namely 92 days, the learned trial

Judge should have allowed the application and taken on record the written statement. Respondent who appears in person submits to the order of the Court. He has tendered photocopy of the Aadhar Card, the same is taken on record and marked 'X' for identification.

4. The learned trial Judge failed to appreciate that while considering the application for condonation of delay, the Court has to adopt liberal approach, more so when there is a delay of 92 days. In the case of ***State of Nagaland Vs. Lipok AO***, (2005) 3 SCC 752, wherein it is held by the Apex Court that what counts is not the length of the delay but the sufficiency of the cause and shortness of the delay is one of the circumstances to be taken into account in using the discretion. The expression “sufficient cause” should be considered with pragmatism in a justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay.

5. In view thereof, the impugned order deserves to be set aside and is accordingly set aside. Delay of 92 days in filing the written statement is condoned. Written statement filed by the petitioner shall be taken on record. Respondent-plaintiff is at liberty to consider filing of additional affidavit of evidence after taking into account written statement. Rule is made absolute in the aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)

Minal Parab