

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

WRIT PETITION NO. 7916 OF 2016

Hanumant s/o Sahebrao Pawar
age 47 years, occ. Agril & Milk Business
r/o Selu, Tq. Ausa
Dist. Latur.

.. PETITIONER

VERSUS

Devidas s/o Kerban Biradar
age 46 years, occ. Service
Business and Agril
r/o Laxmi Colony, Latur
Tq. & Dist. Latur

.. RESPONDENTS

Mr. V.D. Godbharle, advocate for petitioner.
Mr. R.P. Adgaonkar, advocate for respondent.

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**CORAM : S. B. SHUKRE, J.
DATE : 14th FEBRUARY, 2017.**

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith.
2. Heard finally by consent of learned counsel for the respective parties.
3. So far as the contention that the limitation period from the date of receipt of summon issued under Form No. 4A for judgment as contained in Rules 4 and 5 of Order XXXVII of the Code of Civil Procedure is concerned, it has been brought to the notice of this Court by learned counsel for respondent that form no. 4A Appendix B itself has been deleted by Bombay amendment and, therefore, the limitation period would start from the date of receipt of the summons issued in terms of Rule 3 Order XXXVII of the

Code of Civil Procedure.

4. On perusal of Bombay amendment, the contention of learned counsel for respondent appears to be correct. There are two Bombay amendments, one relates to substitution of Form No. 4 pertaining to issuance of summons under Rule 3 and, the second one relates to Form no. 4A. By the first amendment, form No.4, Appendix B has been substituted by Form No. 1 Appendix B and, by second amendment, form no. 4A has been done away with. Substituted form no. 1 is a comprehensive form and it not only pertains to appearance of defendant but also notice regarding final disposal of the suit and, that would mean that it combines requirements of form no. 4 as well as form no. 4A, as originally prescribed under Appendix B. Therefore, the limitation period would start from the date of receipt of summons under form No. 1, for the purpose of Rule 5 of Order XXXVII of the Code of Civil Procedure.

5. Having considered the provisions of law, the contention of learned counsel for petitioner that there was no delay occurred in this case cannot be accepted. The matter, however, would not end here. There is another aspect involved and it relates to rejection of the application by the trial Court seeking leave to defend on the ground of non-submission of an application seeking condonation of delay. According to learned counsel for respondent, such an application must have been filed at the time of filing application under Rule 5 Order XXXVII of the Code of Civil Procedure seeking leave to defend and, since it was not filed, now, time of doing the

same has elapsed. I think, if such a contention is to be accepted, it would amount to taking too technical a view of the case. After all, rules of procedure exist for doing justice between the parties and, justice should not be made to suffer, if for want of some expert advice, a party commits lapse in following the procedure. This is a case in which due to lack of suitable advice to be given to the party by his advocate, delay condonation application was not filed and, therefore, I am of the view that this is a case wherein a party should not be made to suffer for something which was not done though ought to have been done by the expert representing him in this case. At the most, the inconvenience caused to the other side can be compensated in terms of money.

6. In this view of the matter, I am inclined to allow this writ petition and the petition is accordingly allowed. Impugned order is quashed and set aside. Liberty is granted to petitioner to submit delay condonation application and, if it is filed within two weeks from the date of the order, the same shall be disposed of by the trial court within one week thereafter, after giving adequate opportunity of hearing to respondent. This order has been made subject to payment of cost of Rs. 5,000/- to respondent payable within one week from the date of the order. If no such cost is paid within one week, delay condonation application shall not be entertained by the trial Court. Parties to appear before the trial Court on the date due in the matter. Rule made absolute in above terms.

(S. B. SHUKRE)
JUDGE