

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO. 953 OF 2017
WITH
CIVIL APPLICATION (ST.) NO. 29034 OF 2017
IN
APPEAL FROM ORDER (ST.) NO. 23403 OF 2017**

M/s. Carboline (India) Private Limited ...Applicant

Versus

Shivaling Shivappa Poojari ...Respondent

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Mr.Ashish Kamat a/w. Mr.Vivek Shetty, Ms. Cheryl Fernandes i/b. AZB and Partners for the Applicant.

Mr.Shreepad Murthy i/b. Mr.Anantkumar A. Jain for the Respondent.

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**CORAM: MRS.MRIDULA BHATKAR, J.
DATED: NOVEMBER 28, 2017**

P.C. :

1. This Appeal from Order is directed against the order dated 16.06.2017 passed by the learned Judge, City Civil Court, Gr. Bombay in Chamber Summons No. 2365 of 2015 in Summary Suit No. 4151 of 2015.

2. The respondent/plaintiff has filed a Summary Suit for recovery of Rs.80 lakhs in which the summons was served on the

appellant/defendant, however, the appellant/defendant did not appear, but filed Chamber Summons to condone the delay of 216 days to give appearance and file Vakalatnama. In the Chamber Summons, the trial Court condoned the delay by allowing the Chamber Summons, subject to payment of costs of Rs.15,000/- payable by the defendant to the plaintiff and on depositing Rs.5 lakhs in the Court under protest, on or before the next date.

3. Learned counsel for the appellant submits that his grievance only in respect of depositing Rs. 5 lakhs in the Court, which may amount to granting conditional leave without hearing the appellant. He suggests that this issue can be resolved by via media so that the parties can proceed in Summary Suit before the trial Court.

4. Mr. Murthy, learned counsel for the respondent, agrees that if the costs is increased, then he is agreeable for modification of the order.

5. Against the order of Chamber Summons, the Appeal from Order under Order 14 Rule 3 of the Code of Civil Procedure, 1908 is not maintainable. However, as the parties by consent want to resolve this issue, I modify the impugned order as follows:

- (i) The costs of Rs. 15,000/- is increased to Rs.50,000/- and condition of depositing Rs. 5 lakhs in the Court under protest on or before next date is removed. An amount of Rs. 50,000/- is to be paid within a period of one week from today to the respondent/ plaintiff.
- (ii) The trial Court to proceed with the matter without prejudice.

6. Appeal from Order is disposed of. Civil Applications are also accordingly disposed of.

(MRIDULA BHATKAR, J.)