

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO.1033 OF 2016
IN
SUIT NO.1790 OF 2012**

Dattatraya Laxman Bhavise & Ors.	...Applicants (Org.Defendants)
In the matter between	
Shri Vasant Rama @ Dhobi Bavise	...Plaintiff
Vs.	
Dattatraya Laxman Bhavise & Ors.	...Defendants

Mr.Bhavin Gada with Mr.Vasim Shaikh and Mr.Aurilius D'Silva i/b.
M/s. Pravin Mehta & Mithi & Co., Advocates for Defendant Nos.1 to
3/Applicants.

Mr.Satish Borulkar i/b Mr.Ulhas Naik, Advocate for Plaintiff.

**CORAM : K. K. TATED, J.
DATE : AUGUST 16, 2017**

P.C.:

1. Heard the learned Counsel for the parties.
2. This Notice of Motion is preferred by defendant Nos.1 to 3 for condonation of delay in filing written statement in Suit No.1790 of 2012.
3. The learned Counsel Mr.Bhavin Gada for applicants/defendant Nos.1 to 3 submits that there is delay on the part of applicants to file written statement. He submits that in the interest of justice, this Court be pleased to condone the delay caused in filing written statement. If delay is not condoned, irreparable loss would cause to the applicants/defendant Nos.1 to 3.

4. On the other hand, the learned Counsel Mr.Satish Borulkar appearing on behalf of the plaintiff opposed the present Notice of Motion. The learned Counsel for the plaintiff submits that as the applicants/defendant Nos.1 to 3 failed to file their written statement within stipulated time, the matter was supposed to be listed under the caption for "Undefended Suit". He submits that in the meanwhile, the suit stands dismissed for default by order dated 12th December 2014 and thereafter they preferred Notice of Motion (L) No.223 of 2015. He submits that this Court by order dated 10th February 2015, allowed the said Notice of Motion and directed the matter to be placed under the caption "Undefended Suits". He submits that in the present Notice of Motion, the applicants have not made any prayer to set aside the order of undefended suit and hence, there is no question of allowing the applicants to file their written statement by condoning delay of 869 days. Hence, the Notice of Motion be dismissed with costs.

5. Heard both sides at length.

6. During the course of arguments, the learned Counsel for the plaintiff filed affidavit of service dated 8th February 2016. Affidavit of service shows that the amended copy of the Plaint was served on the applicants on 2nd February 2016.

7. In the present proceeding, though earlier the matter was shown under the caption for "Undefended Suit", thereafter as per the order dated 6th October 2015, the plaintiff carried out amendment in the Plaint. Thereafter the matter appeared before this Court on 17th

November 2015. At that time, at the request of plaintiff, 12 weeks time was granted to serve the amended copy of the Plaint on the defendants. As per affidavit of service dated 8th February 2016, amended copy of the Plaint was served on the applicants on 2nd February 2016. Thereafter they preferred the present Notice of Motion for condonation of delay in filing written statement on 1st April 2016. Considering the fact that the amended copy of the Plaint was served on the applicants on 2nd February 2016, still there is delay of 58 days on the part of the applicants to file their written statement. Considering this fact and the averments made in the affidavit in support of notice of Motion, I satisfy that applicants have made out a case for allowing this Notice of Motion, but at the same time, they have to pay costs of Rs.2,500/-. Costs is to be deposited to Kirtikar Library within 4 weeks from today. Hence, the following order:-

ORDER

- (i) Delay in filing written statement on the part of applicants is condoned;
- (ii) Applicants are permitted to file their written statement within one week from today with copy to the plaintiff and other defendants;
- (iii) Applicants to pay costs of Rs.2,500/-.
- (iv) Costs to be deposited in the office of Kirtikar Library, within 4 weeks from today and file proof to that effect in the Registry, failing which the Notice of Motion shall stand dismissed without taking back to the Court.
- (v) Notice of Motion stands disposed of accordingly.

(K.K.TATED, J.)