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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8251 OF 2017

M/s.Seafood Park (India) Ltd.	...Petitioner
V/s.	
M/s.Industrial Refrigeration & Ors.	...Respondents

Mr.Ashish Agarwal with Ms.Debashree Mandpe and Ms.Kavita Sharma I/b Ganesh & Co. for the Petitioner.

Mr.Ashish Mehta with Ms.Shivali Khadke I/b Mr.Dipal Jamsandekar for the Respondents.

CORAM : R.D. DHANUKA, J.
DATE : 30TH AUGUST, 2018.

P.C. :-

1. By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 12th April, 2016 passed by the learned City Civil & Sessions Court, Mumbai in Notice of Motion No.1385 of 2016 condoning delay in filing the summons for judgment.

2. This Court by an order dated 10th March, 2016 in Writ Petition No.11617 of 2015 filed by the petitioner herein had set aside the order passed by the Bombay City Civil Court in Summons for Judgment No.272 of 2011 and had directed that the matter be placed before the Chamber Judge under Rule 117. The said summons for judgment was decided after considering the delay in filing the

summons for judgment.

3. Pursuant to the said order passed by this Court, the respondent (original plaintiff) filed the Notice of Motion no.1385 of 2016 *inter-alia* praying for condonation of delay. The said notice of motion was served upon the petitioner herein on 31st March, 2016. It is the case of the petitioner that the petitioner applied for time to file an affidavit in reply to the said notice of motion. The matter was however, heard on 1st April, 2016 and the said notice of motion came to be allowed.

4. Mr.Agarwal, learned counsel appearing for the petitioner invited my attention to the affidavit in support of the notice of motion and also the order passed by this Court on 10th March, 2016 and would submit that the learned trial Judge himself decided the matter though the matter was to be decided by the Chamber Judge in terms of Rule 119. He submits that no opportunity was given to the petitioner to file affidavit in reply to the said notice of motion. It is submitted that no case was made out for condonation of delay in filing the summons for judgment before the learned Judge.

5. Mr.Mehta, learned counsel appearing for the respondents (original plaintiffs) on the other hand submits that there is no such Chamber Judge in the Bombay City Civil Court and thus the said notice of motion was rightly heard by the learned Judge who was

hearing the notice of motion. He submits that the petitioner was granted an opportunity by the learned Judge to file affidavit in reply however, he refused to avail off that opportunity and thus the matter was heard on 1st April, 2016 and appropriate order was passed by the learned trial Court. This Court shall not interfere with the said order passed by the learned trial Judge.

6. It is not in dispute that the earlier summons for judgment which was allowed by the Bombay City Civil court was set aside by this Court by an order dated 10th March, 2016. The original plaintiffs were allowed to file the notice of motion. It is not in dispute that the petitioner was served with the said notice of motion on 31st March, 2016. The matter was heard on 1st April, 2016. I am inclined to accept the submission made by Mr. Agarwal, learned counsel for the petitioner that no opportunity was granted to the petitioner to file affidavit in reply to the said notice of motion and the said notice of motion was heard in violation of the principles of natural justice.

7. In view of the fact that no opportunity was granted by the learned trial Court to the petitioner to file affidavit in reply, I am not inclined to go into the issue whether the respondents have made a sufficient cause for condonation of delay in filing the summons for judgment or not and the said issue can be decided by the learned Trial Judge.

8. The impugned order dated 12th April, 2016 passed by the learned trial Judge is accordingly set aside. The Notice of Motion No.1385 of 2016 is restored to file. The petitioner is directed to file affidavit in reply to the said notice of motion within two weeks from today and a copy thereof shall be served upon the respondents' advocate simultaneously. Rejoinder, if any, shall be filed within one week from the date of service of the affidavit in reply and a copy thereof shall be served upon the petitioner's advocate simultaneously.

9. Learned Principal Judge shall assign the matter to any other Judge who is assigned the matter of hearing the notice of motion.

10. The writ petition is allowed in aforesaid terms. There shall be no order as to costs.

11. Learned trial Judge shall dispose of the said notice of motion expeditiously and not later than three months from the date of completion of pleadings by both the parties. None of the parties shall apply for any unnecessary adjournment. Both the parties shall co-operate with each other and also with the learned trial Judge in disposing of the said notice of motion expeditiously.

(R.D. DHANUKA, J.)