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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.
WRIT PETITION NO. 8502 OF 2015.**

Sham Shivanand Wagle	...	Petitioner
V/s.		
ICICI Bank Ltd.	...	Respondent

Mr. V. Y. Sanglikar, for the Petitioner.
Ms. Vrushali U. Kabare, for the Respondent.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 1st MARCH, 2018.

P.C. :

- 1] Heard learned counsel for the petitioner and respondent.
- 2] By this petition filed under Article 227 of the Constitution of India, the petitioner is challenging the order dated 2nd May, 2015, passed by City Civil Court, Mumbai, in Notice of Motion No.2886 of 2014 in Suit No.9389 of 1999 (High Court Suit No.5338 of 1999).
- 3] The petitioner is the original plaintiff in the suit. The respondent- original defendant No.4 has taken Notice of Motion for setting aside exparte order dated 22nd February, 2013, passed against it and for condonation of delay in filing written statement.
- 4] The trial Court has allowed the said Notice of Motion subject to costs Rs.1,000/- and permission was granted to file written statement.
- 5] The submission of learned counsel for the petitioner,

however, is to the effect that respondent was served in the matter on 27.10.2010; whereas this Notice of Motion is filed in the year 2014. Thus, there is delay of about 4 years in filing the Notice of Motion and that delay is not at all satisfactory explained.

6] Learned counsel for the respondent submits that as per the impugned order passed by the trial Court, the respondent has already paid costs of Rs.1,000/- and the written statement is also taken on record.

7] Learned counsel for respondent points out further to the affidavit of Mrs. Manasi Jadhav, filed in support of this Notice of Motion, in which it is stated that initially suit was pending in the High Court and it was transferred to City Civil Court in October, 2012. One Mr. Kanitkar, authorised officer of respondent bank was looking after the Court matters, informed the respondent regarding transfer of above suit to the City Civil Court, but he was not aware about the Court room where the matter was assigned. Thereafter in July, 2013, Mr. Kanitkar, resigned from the office and as a result, concerned department of respondent lost the track of the matter. Only when the official of the legal department of respondent bank received information on the Internet that the suit is assigned in Court room No.13, the Notice of Motion was taken for setting aside such exparte order and also for taking written statement on record.

8] In my considered opinion, this explanation offered by the respondent No.4 can be called as sufficient having regard to the sequence of events in which the suit came to be transferred to City Civil Court and as a result respondent lost the track of the suit especially in the light of explanation that their Officer Mr.Kanitkar, who was looking after the matter, has resigned in the year 2013.

9] In such situation, no fault can be found in the impugned order passed by the trial Court, if an opportunity of proceeding with the hearing of the suit is given to respondent-defendant No.4. The trial Court has rightly observed that as the matter pertains to bank involving the money of the public at large, it should not be decided ex parte on technical ground and relevant provisions under Order VIII Rule 1 of Code of Civil Procedure are directory and not mandatory in nature. The law is well settled that procedural law is handmaid to advance substantive cause of justice and not to scuttle the course of justice. Already the suit is of the year 1999 and it is essential that it should be decided on merits. Hence no interference is warranted, therefore, in the impugned order.

10] The Writ Petition, therefore, being without any merit, stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]