

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION**

**COMMERCIAL SUIT NO.59 OF 2017
WITH
NOTICE OF MOTION NO.643 OF 2017
NOTICE OF MOTION NO.1885 OF 2018**

Mahendra Karsandas Mehta)...Plaintiff
V/s.

M/s.Excel Enterprises & Ors.)....Defendants

Mr.Clive D'souza for plaintiff and applicant in NMCD No.1885/2018.
Mr.Jayesh Mestry I/by RMG Law Associates for defendant no.1 and
applicant in NMCD No.643 of 2017.
Mr.Christine Wilson I/by Dushyant Purekar for defendant no.10.

**CORAM : K.R.SHRIRAM,J
DATE : 5.12.2018**

P.C.:-

1. Defendant no.1 has taken out Notice of Motion No.643 of 2017 to condone delay of 219 days in filing written statement. Mr.D'souza for plaintiff states that under the amended provisions of Code of Civil Procedure, 1908, the time to file written statement is maximum of 30 + 90 days and the question of condoning of any delay does not arise. Mr.Mestry for the applicant is not ready to argue the Notice of Motion since he wants to look up the provisions of law. At the same time, Mr.D'souza states that plaintiff may consent subject to defendant no.1 paying substantial costs. Mr.Mestry leaves it to the Court.

2. Upon defendant no.1 paying sum of Rs.1,00,000/- as costs (Rs.50,000 donation to Mumbai Police Welfare Funds and Rs.50,000 to plaintiff by way of cheque drawn in favour of Advocate for plaintiff), the time to file written statement is condoned. Mr.Mestry states that written statement is already affirmed and will be filed in the registry during the course of today and a copy also will be served upon plaintiff. Registry to take the written statement on file. It is made clear that if costs are not paid within one week from today, the written statement of defendant no.1 will be struck off.

3. Defendant no.10 is the only other defendant who has filed the written statement. A copy however, has not been served upon plaintiff. Mr.Wilson for defendant no.10 states that copy will be provided during the course of today.

4. Stand over to 12.12.2018 for issues as regards plaintiff and defendant nos.1 & 10. Mr.D'souza states that the suit has already been transferred to the list of un-defended suit as regards the other defendants.

5. On the next date, parties shall come with agreed draft issues and a separate list of issues on which they are unable to agree.

6. In view of the above, Notice of Motion No.1885/2018 and Notice of Motion No.643 & 117 also stand disposed.

(K.R.SHRIRAM,J)