

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2197 OF 2019

M/s.Hari International and anr.	.. Petitioners
Vs.	
Anand Shyamsunder Sangai	.. Respondent

Mr.Kaustubh Gupte a/w Mr.Mohit Sahani i/b Mr.Ashish Mehta,
for the Petitioners.
Mr. Kaushal Tamhane a/w Ms.Meenakshi Dhanuka – Rungta, i/b
Dhanuka & Partners, for the Respondent.

CORAM : M.S.KARNIK, J.
DATE : 27th SEPTEMBER 2019

P.C. :

. Not on board. Taken on board.

2. Heard learned Counsel for the petitioners. The petitioners are challenging the order dated 20/08/2018 passed by the trial Court rejecting the Notice of Motion No. 3147 of 2017 taken out by the petitioners – defendant No.2 for condonation of delay of 220 days in filing the affidavit in reply to the summons for judgment which is taken out by the plaintiff. The trial Court for the elaborate reasons recorded rejected the Notice of Motion. In the Notice of Motion, the explanation that

is given by defendant No.2 is that initially, the Advocate he had engaged fell ill. Thereafter he engaged another Advocate. He also fell ill. The trial Court came to the conclusion that the explanation does not deserve to be accepted as patently false grounds have been raised in the Notice of Motion for condonation of delay. Considering the conduct of the defendant No.2 as reflected from the order passed by the trial Court, it cannot be said that the observations made by the trial Court are unwarranted.

3. Learned Counsel for the respondent vehemently opposed the present Petition. He supported the order passed by the trial Court.

4. The Suit is filed by the plaintiff for recovery of money to the tune of Rs.53,00,000/- along with interest. The delay in filing affidavit in reply to summons for judgment is 220 days. In my opinion, considering that the delay is of 220 days, defendant No.2 should not be deprived of an opportunity of

defending the Suit only on the ground of delay as this would be a fit case to impose exemplary cost on the defendant No.2 considering his conduct. The contention that petitioner should not be made to suffer for default on the part of the Advocate deserves to be accepted.

5. In this view of the matter, Writ Petition is allowed subject to defendant No.2 paying to the plaintiff cost of Rs.75,000/- within a period of 2 weeks from the date of uploading of the order. After the cost is paid to the plaintiff, defendant No.2 is permitted to file affidavit in reply to the summons for judgment within a period of 10 days from the date of payment of cost.

6. It is made clear that if the cost is not paid to the plaintiff within a period of 2 weeks from the date of uploading of this order, the order passed by the trial Court in the Notice of Motion No. 3147 of 2017 will stand.

7. With these observations, Notice of Motion No. 3147 of 2017 is allowed. The impugned order is set aside. Petition is allowed.

(M.S.KARNIK, J.)

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