

14.8.2019

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6702 OF 2019
IN
NOTICE OF MOTION NO. 3094 OF 2016
IN
SUMMONS FOR JUDGMENT NO. 52 OF 2016
IN
SUMMARY SUIT NO. 886 OF 2015**

Ramesh D. Nasta

...Petitioner
(Orig. Defendant)

V/s.

Ahimsa Hospitality Pvt. Ltd.

....Respondent
(Orig. Plaintiff)

Mr. M.S. Bhandari i/by. Ms. Pranjali Bhandari,
Advocate for the petitioner.

Mr. B.K. Bali, i/by. Bali Associates, Advocate for
respondent no.1.

CORAM : SANDEEP K. SHINDE, J.

DATED : 14TH AUGUST, 2019.

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P.C. :

1. The petitioner is the defendant in Summary Suit No. 886 of 2015 instituted by the respondent-plaintiff seeking decree in the sum of Rs.60 lacs. The plaintiff served copy of the Summons for Judgment on the Advocate for the defendant on 18th February, 2016 with the returnable date being 18th March, 2016. It appears though Summons for Judgement was served, no leave was sought to defend the suit, within time, as required under Rule 3(5) Order 37 of the Civil Procedure Code ("CPC" for short).

2. The petitioner, thus sought condonation of 135 days delay caused in terms of Rule 3(7) of Order 37 of the Code of Civil Procedure. Rule 3(7) reads as under :

"R.3. Procedure for the appearance of defendant -

(7) The Court or Judge may, for sufficient cause shown by the defendant, excuse the

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delay of the defendant in entering an appearance or in applying for leave to defend the suit."

3. The Notice of Motion was heard and dismissed by the learned Judge on 31st July, 2017 by placing reliance on the judgment of this Court in the case of **Rentworks India Pvt. Ltd. V/s. India Infoline Ltd. delivered in Writ Petition No.9999 of 2013.**

4. Aggrieved by the said order, this petition is preferred. It may be stated that the impugned order refusing to condone the delay, was passed on 31st July, 2017; however, this petition has been filed on 11th August, 2018 without stating any reasons as to why the petition was filed after a year or more. In para-12 of the petition, it is stated;

"12. The petitioner has approached this Hon'ble Court as expeditiously as possible and in the facts of this case, as also set out hereinabove. In case the court

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comes to the conclusion that there has been any delay, the same be condoned, for reasons, personal and otherwise, on the part of the petitioner. There are no malafides on the part of the petitioner."

5. A fact which cannot be overlooked is that, the petitioner has not explained the inordinate delay on his part in approaching this Court against the impugned order dated 31st July, 2017.

6. It may be stated that, proceedings of the summary suit indicate that the petitioner was not diligent in pursuing his remedy in defending the suit. At first place, there was a delay of 135 days on his part in filing the Affidavit-in-reply to the Summons for Judgment and even thereafter, upon rejection of his application for condonation of delay, he approached this Court as well almost a year later. This delay has not been explained by the

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petitioner and therefore this frustrates the object of the summary suit.

7. Though I am not convinced with the reasons for not condoning the delay, however, in my view, there was an inordinate delay on the part of the defendant in approaching this Court.

8. The Apex Court in the case of **B. Madhuri Goud v. B. Damodar Reddy**, reported in (2012) 12 SCC 693, broadly culled out the following principle :

"There is a distinction between inordinate delay and delay of short duration/few days, for to the former doctrine of prejudice is attracted whereas to the latter, it may not be attracted. That apart, the first one warrants strict approach, whereas, second calls for a liberal delineation."

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9. The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration while condoning the delay. In this case, the suit was instituted in the year 2015 under Order 37 of CPC seeking decree in the sum of Rs.60 lacs. Though Summons for Judgement was served on 18th February, 2016, affidavit-in-reply seeking leave to defence was not filed in time. Thus, while seeking condonation of delay in terms of sub-rule (7) of Rule 3 of Order 37, defendant in para-5 of the Affidavit has stated as under :

"5. I say that in view of my own health reasons also, my advocates have not been able to get instructions from me to finalise the affidavit-in-reply to the Summons for Judgement. I say that during the intervening period, I was also required to go out of Mumbai for a short while for personal reasons, as also there was a hospitalization of a family-member, making

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me unavailable for some-days from giving instructions, and/or taking out the rpresent application."

10. As against this, in this petition, petitioner has not stated anything except by saying that he has approached this Court as expeditiously as possible. Thus, there are no reasons at all explaining the delay and therefore a liberal approach cannot be adopted.

11. It may be stated, in the course of hearing, the petitioner was indicated that the Court may entertain the petition subject to deposit of Rs.50 lakhs (net of interest accrued on Rs.60 lakhs), however, the petitioner was willing to deposit Rs.10 lakhs only.

12. Thus, taking into consideration the facts of the case and the inordinate unexplained delay on

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the part of the petitioner, I am not inclined to interfere with impugned order in the writ jurisdiction. The petition is dismissed and disposed of accordingly.

(SANDEEP K. SHINDE, J)