

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9834 OF 2019

Satkar Logistics Pvt. Ltd.	.. Petitioner
Vs.	
Jawaharlal Nehru Port Trust (JNPT)	.. Respondent

Mr.Sunny Shah I/b Bhandary & Bhandary, for the Petitioner.
Mr.Hemant Prabhulkar a/w Mr.Yogesh Bhoge I/b Mumbai
Jurisperitus, for the Respondent.

CORAM : M.S.KARNIK, J.

DATE : 06th SEPTEMBER 2019

P.C. :

- . Heard learned Counsel for the petitioner.
2. By this Petition filed under Article 227 of the Constitution of India, the petitioner is challenging the order passed below Exhibit 110 by the trial Court rejecting the application filed by petitioner – defendant to condone the delay in filing the application for leave to defend in the Summary Suit.
3. Learned Counsel for the petitioner pointed out that when the matter was listed on 09/07/2019 before the trial

Court the petitioner – original defendant's Counsel failed to remain present. It is pointed out that though the petitioner had engaged an Advocate he could not remain present before the trial Court due to some personal difficulty. Learned Counsel for the petitioner would submit that in the application good reasons have been mentioned for condonation of delay in filing application for leave to defend. He states that he has good grounds to defend the Suit.

4. Learned Counsel for the respondent - plaintiff on the other hand opposed the Petition. He submitted that the petitioner and his Counsel repeatedly remained absent and they are only interested in protracting the Suit. According to learned Counsel for the respondent substantial sums are to be recovered from the petitioner and therefore the petitioner is interested in delaying the proceedings. He submits that the trial Court by a reasoned order has rejected the application for condonation of delay. He would submit that even if the petitioner or his Counsel were not present, it would hardly make a difference

because upon considering the reasons mentioned in the application for condonation of delay, the trial Court has rejected the application on merits.

5. I have gone through the order passed by the trial Court. No doubt, the trial Court has given reasons for rejection of application for condonation of delay. However, the petitioner though was represented by an Advocate, their Advocate could not remain present due to some personal difficulty. Learned Counsel for the petitioner relying upon the averments made in the application for condonation of delay and grounds in the Petition would submit that if one opportunity is given to the petitioner to represent their case, they would be in a position to persuade the trial Court to condone the delay in filing the application for leave to defend. Learned Counsel for the petitioner would submit that right to defend the Suit should not be taken away only on the ground of delay, more so when the opportunity can be given to petitioner's Counsel to represent the petitioner's case before the trial Court as the application is

decided in the absence of plaintiff's Counsel. In my opinion, the request seems to be reasonable. The respondent can be adequately compensated with costs. Advocate for the petitioner could not remain present before the trial Court on behalf of the defendant due to some personal difficulty.

6. In these circumstances, for these reasons, Petition is allowed subject to payment of cost of Rs.15,000/- to be paid by the petitioner to respondent within a period of 2 weeks from today. Impugned order is set aside. The trial Court to rehear the application Exhibit 110 afresh and decide the same on its own merits without being influenced by any observations made by me in this order. All contentions of the parties are kept open.

7. It is made clear that the next date before the trial Court is 20/09/2019 when the petitioner – original defendant through his Counsel should remain present to argue the application below Exhibit 110 and will not seek adjournment.

8. Writ Petition is allowed with no order as to cost.

(M.S.KARNIK, J.)