

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.10616 OF 2015

Monish S. Ganwani

.. Petitioner

V/s.

Pawan Srichand Udasi

.. Respondent

Ms.Minal S. Chandnani I/b Mr.J.S.Chandnani for the petitioner
Mr.K.P.Mali for the respondent no.1

CORAM: K.K. TATED, J.

DATED : JANUARY 4, 2019

P.C. :

1 Heard.

2 By consent, matter is taken on board for final hearing at the stage of admission itself.

3 By this petition under Article 227 of the Constitution of India, the Petitioner original defendant challenges the order dated 14.07.2015 passed by Civil Judge, Junior Division, Ulhasnagar below Exhibit-12 in Special Civil Suit No. 13 of 2013 rejecting Petitioner original defendant's Application for condonation of delay in filing appearance in Summary Suit.

4 The learned counsel for the Petitioner original defendant submits that in the present proceedings, Respondent original

plaintiff filed Special Civil Suit No. 13 of 2013 in the court of Civil Judge, Junior Division, Ulhasnagar for recovery of sum of Rs.3 lacs under Order 7 Rule 11 of the Code of Civil Procedure, 1908 . She submits that there was some delay on their part to file appearance before the Trial Court. Hence, Petitioner preferred Application for condonation of delay dated 14.08.2014 Exhibit-12. Advocate for the Petitioner submits that the said Application was dismissed by Trial Court on the ground that there is no provision under Code of Civil Procedure, 1908 for condonation of delay. She submits that Trial Court failed to consider the fact that as per Order 37 Rule 3 (7) of the Code of Civil Procedure, 1908 the court can condone the delay if sufficient cause is shown. Sub rule 7 of Rule 3 of Order 37 reads thus:

“(7) The Court or Judge may, for sufficient cause shown by the defendant, excuse the delay of the defendant in entering an appearance or in applying for leave to defend the suit.”

5 The learned counsel for the petitioner submits that in view of the order 37 Rule 3 sub rule 7 of the Code of Civil Procedure, 1908 Trial Court ought to have decided the Petitioner's Application on its own merits instead of dismissing only on the ground that there is no provision in Code of Civil Procedure, 1908 for condonation of delay. Hence, the learned counsel for the Petitioner submits that in view of these facts order dated 14.07.2015 passed by Civil Judge, Junior Division, Ulhasnagar below Exhibit-12 is required to be set aside and matter be remanded for hearing for deciding Petitioner's Application below Exhibit-12.

6 At this stage, the learned counsel for the Respondent submits that instead of remanding the matter to the Trial Court to decide Petitioner's Application for condonation of delay Exhibit-12, he submits that Respondent original plaintiff has no objection if Application filed by Petitioner for condonation of delay is allowed and matter be decided on its own merits as early as possible.

7 Hence, by consent of both the parties, following order is passed:

- a) Order dated 14.07.2015 passed by Civil Judge, Junior Division, Ulhasnagar below Exhibit 12 in Special Civil Suit No. 13 of 2013 is set aside.
- b) Application filed by Petitioner original defendant dated 14.08.2014 Exhibit-12 for condonation of delay in filing appearance is allowed.
- c) Hearing of Special Civil Suit No. 13 of 2013 is expedited.
- d) This court expects Trial Court to decide matter as early as possible but in any case on or before 30.09.2019.
- e) No order as to costs.

(K.K. TATED, J.)