

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION (ST.) NO.29556 OF 2019

Naresh Govind Vaze ... Petitioner
Vs.
Industrial Development Bank of India and another ... Respondents
Mr. Naresh Govind Vaze, Petitioner in person.

CORAM : UJJAL BHUYAN, J.
DATE : NOVEMBER 29, 2019

P.C. :

Heard Shri Naresh Govind Vaze, petitioner in person.

2. Petitioner is aggrieved by order dated 23.10.2019 passed by the Bombay City Civil Court at Mumbai in Notice of Motion No.2747 of 2019 arising out of Summary Suit No.1282 of 2018.

3. Petitioner as the plaintiff has instituted the Summary Suit against the respondents. Though respondents were represented by learned counsel, there was delay of 5 days in filing *Vakalatnama* for which Notice of Motion was sought. This was objected to by the petitioner. However, by order dated 23.10.2019, the Notice of Motion was allowed and delay of 5 days in filing *Vakalatnama* was condoned subject to payment of costs of Rs.300.00 to the District Legal Services Authority, Mumbai.

3.1. This order is assailed by the petitioner.

4. Mr. Vaze makes two-fold submissions. His first submission is that there is no provision for condoning delay in filing of *Vakalatnama* which is required to be filed on the date of appearance itself. Therefore, learned Court below had erred in accepting the delayed *Vakalatnama*.

4.1. He submits that under Article 118 of the Indian Limitation Act,

1963, a right had accrued to the plaintiff to a decree by failure of the defendants to enter appearance and file *Vakalatnama*, which has been taken away by the Court by the impugned order. Submissions made in this regard were not considered by the Court below.

4.2. His second contention is that the *Vakalatnama* itself is forged and in this regard he has filed necessary complaint.

5. Submissions made have been duly considered.

5.1. At the outset order dated 23.10.2019 may be adverted to, relevant portion of which is extracted hereunder:

“6. From the record it can be seen that there is delay of 05 days to file vakalatnama on behalf of defendant. The defendant has taken ground that because of the time taken in official clearance and procedures the delay is caused. The roznama shows that this case is strongly contested by the both sides and plaintiff as well as Advocate of defendant is present on each and every date. According to plaintiff as per City Civil Rules the defendant ought to have taken out chamber summons but they have taken out notice of motion which is wrong proceedings. This argument has no substance as this court has already granted leave to register the motion.

7. Further the plaintiff has made contentions that once the defendant fails to file his appearance within time then the Court cannot extend that time. In the case of Messrs. Tailors Priya, a firm (supra) the Hon’ble High Court of Calcutta has held that, “By Art 159 of the Indian Limitation Act, 1908 an application for leave to appear and to defend the suit must be made within 10 days from the date of the service of the writ of summons. No such application was made within the time prescribed. Consequently, the trial Judge was bound to refuse the leave. The application for extension of time to make the application for leave to defend was misconceived.” After perusal of whole decision, it is respectfully submitted that the said decision is not applicable to the present case as in this case the defendant has not applied for extension of time to file appearance but to condone the delay to file appearance and as per the provision of Order 37 Rule 3(7) of the Code of Civil Procedure, such application is tenable. The defendant has shown sufficient cause to condone the delay in filing the vakalatnama. Therefore, point No.1 is answered as ‘Yes’ and following order is passed.

ORDER

1. Notice of Motion No.2747 of 2019 is allowed.
2. The delay of 05 days to file appearance of defendant is condoned subject to cost of Rs.300/- to be paid to the District Legal Services Authority, Mumbai.
3. On payment of cost, vakalatnama shall be taken on record.
4. Notice of Motion No.2747 of 2019 is disposed of accordingly.”

6. Insofar the first contention of the petitioner is concerned, Court is of the view that the the objection appears to be more of form than of substance. Allowing the defendants to contest the Suit in no way can be construed to cause prejudice to the plaintiff. To that extent, no interference is called for in condoning the delay of 5 days.

6.1. Regarding the second contention, this Court exercising jurisdiction under Article 226/227 of the Constitution of India is not the forum to come to any definite finding. Since the petitioner has already filed necessary complaint, petitioner may pursue his remedy in accordance with law.

7. Subject to the above, no interference is called for.

8. Petition is dismissed.

(UJJAL BHUYAN, J.)

Minal Parab