

JPP

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION***

COMMERCIAL APPEAL (L) NO. 53 OF 2019

in

SUMMONS FOR JUDGMENT NO. 103 OF 2018

in

COMM. SUMMARY SUIT NO. 894 OF 2018

Morya Infraconstruct Pvt. Ltd.

... Appellant

V/s.

Harmony Lifestyle Structures Pvt. Ltd.

... Respondent.

Mr. Omar Khaiyyam Shaikh I/b. Vijay Chavan for the
Applicant/Appellant

Mr. Chetan Yadav I/b. R.V. & Co. for the Respondent.

***CORAM : PRADEEP NANDRAJOG, C.J. &
N.M. JAMDAR, J.***

DATE : 18 APRIL 2019.

P.C. :-

Heard learned Counsel for the parties.

2. The Respondent filed a Suit under Order XXXVII of the
Code of Civil Procedure.

3. Served with the notice in the suit, the Appellant entered
appearance and was thereafter served with Summons for Judgment.

Within ten days thereof leave to defend was to be sought. The Suit was listed before the Court on 4 December 2018. Noting that leave to defend Motion was not placed before the Court and that the motion for leave to defend was filed beyond period of ten days without any Motion being filed to condone the delay or extend the time for filing the Motion seeking leave to defend, the suit has been decreed.

4. Suffice it to state, if leave to defend is not sought within ten days of Summons for Judgment being served, the learned Trial Judge would be perfectly justified in decreeing the Suit. If leave to defend was filed beyond the period of limitation, it had to be accompanied by a request to condone the delay showing sufficient cause for delay to be condoned pleaded in the request. The Appellant did not do so. The impugned order does not record that at the hearing even an oral application was filed.

5. Thus, we find no infirmity in the impugned order.

6. The remedy of the Appellant actually lies in proceeding under Order XXXVII Rule 4 of the Code of Civil Procedure before the learned Single Judge.

7. The Appeal is dismissed.

N.M. JAMDAR, J.

CHIEF JUSTICE