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

**NOTICE OF MOTION NO.1172 OF 2016
IN
SUIT NO.1576 OF 2006**

Kukreja Construction Co. ... Applicant.
Eastern Steel Industries ... Plaintiff.
V/s.
Technis Industries and 3 ors ... Defendants.

Ms. Pinky Sharma a/w C. B. Pandhare i/by Chitnis Vaity
and Co., for the Plaintiff.
Mr. Kapil Moye a/w Nilesh Tated and Saching Shankar i/by
DSK Legal Advocates, for applicant/defendant No.3

CORAM : N. J. JAMADAR, J.

DATE : 26th November, 2019.

PC. :

1] This Notice of Motion is taken out by applicant-defendant No.3 to set aside the order dated 22nd September, 2008, passed by the learned Prothonotary and Senior Master, whereby the suit was directed to proceed without written statement against defendant No.3. The applicant has also prayed for condonation of delay of 2416 days in filing the written statement and permit defendant No.3 to file written statement.

2] By order dated 22nd September, 2008, the suit against defendant Nos. 1 and 3 was directed to be transferred to the list of undefended suits as

defendant Nos. 1 & 3 failed to file written statement within the statutory period. In the affidavit in support of the Notice of Motion of Mr. Rony Jacob Das, Manager, of defendant No.3 affirms that the draft of the written statement was settled and forwarded by the attorney of the defendant No.3. However, the written statement could not be filed on account of his inadvertence. Mr. Rony Jacob, further affirms that after the order was passed by this Court on 15th March, 2016, the attorneys again communicated the said lapse on his part and thereupon written statement has been finalized on 13th April, 2016.

3] Indisputably, there is huge delay on the part of the defendant No.3 in taking out this notice of motion, seeking permission to file the written statement. In view of the proviso to Rule 1 Order VIII of the Code of Civil Procedure, 1908, the Court is not expected to grant permission to file the written statement as a matter of course, though the said provision has been construed to be directory. In the case at hand, the reasons assigned by the defendant No.3 in the affidavit in support of notice of motion, cannot be said to be wholly justifiable. However, the fact that the written statement was drafted and sent by the advocates for settlement to the defendant No.3 and on account of inadvertence on the part of the deponent the written statement could not be filed, cannot be said to be totally irrelevant. The suit has not proceeded despite the same having been directed to proceed

without written statement against the defendant No.3. Thus, in order to advance the cause of justice and provide an effective opportunity to the defendant No.3 to defend the suit, the delay occurred in filing this notice of motion to allow the defendant No.3 to file the written statement, deserves to be condoned. The inconvenience caused to the plaintiff can be compensated by awarding costs.

4] For the aforesaid reasons, the Notice of Motion is made absolute in terms of prayer clause (a), (b) and (c). The defendant No.3 is permitted to file written statement subject to payment of costs of Rs.5,000/- to the plaintiff, within a period of three weeks from today and file the written statement within the same period.

5] In the event of default on the part of defendant No.3 to pay the costs within the stipulated period, this order would stand vacated automatically.

6] The Notice of Motion No.1172 of 2016 stands disposed of.

7] The suit be listed on 17.12.2019.

[N. J. JAMADAR, J.]