

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY AND ORIGINAL CIVIL JURISDICTION
COMMERCIAL NOTICE OF MOTION NO.1232 OF 2019
IN
COMMERCIAL IP SUIT NO.1423 OF 2018**

Dart Industries INC. & Anr

..Plaintiffs

Vs.

Ratan Plasticware & Ors

..Defendants

Mr. Anees Patel a/w Mr. Hardik Sampat I/b Anees Patel for Plaintiff/Applicant

Mr. H. W. Kane a/w Mr. Rahul Kadam and Ms. Vedangi Soman I/b W. S. Kane and Co. for Defendants

CORAM : K.R.SHRIRAM, J.

DATE : 16th JULY 2019

P.C.:

1 This is an application for condonation of delay in filing the written statement. Written statement was served on 2nd January 2019, 30 days expired on or about 1st February 2019 and the written statement has been declared on 7th February 2019. A copy of the written statement has been served on plaintiffs on 8th February 2019, but this notice of motion for condonation of delay has been lodged on 20th April 2019. Therefore, technically, there is a delay of 77 days in filing the written statement in the registry, though the written statement has been declared with a delay of about 6 days.

2 The reason is given in paragraph 4 of the affidavit in support. No affidavit in reply has been filed but counsel for plaintiffs states that

defendants should have approach the court immediately after 7th February 2019 and should not have waited till 20th April 2019. I would have also expected defendants to have approach the court promptly.

3 Be that as it may, since the written statement itself has been declared on 7th February 2019 and copy has been served on 8th February 2019, I would proceed in this case, based on the facts and circumstances, that the delay has been only of about 6 days. That delay has been explained to my satisfaction in paragraph 4 of the affidavit in support.

4 In the circumstances, notice of motion is allowed. Registry to accept the written statement and take the written statement on record, subject to removal of office objections, if any.

5 Defendants to pay a sum of Rs.10,000/- as donation to **Dean pbcf kem hospital**, K.E.M. Hospital, Dr. E. Borges Road, Parel, Mumbai-400012 within two weeks from today and forward the proof of payment to plaintiffs advocate within two weeks.

6 Notice of motion accordingly stands disposed.

7 On or before 2nd August 2019 parties shall give inspection of their respective documents. If inspection is not given, such party will not be permitted to rely on such document. On or before 9th August 2019 statement of admission and denial with reasons for denial to be exchanged. If the statement of admission and denial is not given, parties shall be deemed to have admitted the existence of all the documents of the other side.

8 Suit be listed for issues on 19th August 2019 on which date parties shall come with agreed draft issues and a separate list of issues on which they are unable to agree. On the next date, if parties do not come with draft issues, they are put to notice that parties will be put to terms.

(K.R. SHRIRAM, J.)