

Tauseef

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

**NOTICE OF MOTION NO.1841 OF 2019
IN
SUIT NO.761 OF 2011**

Yash Constructions ...Applicant / Defendant No.68

IN THE MATTER BETWEEN :

Rajnikant H. Mehta & Ors. ...Plaintiffs

V/S.

Parag R. Kotadia & Ors. ...Defendants

Mr. Rajiv Narula a/w. Mr. Aatir Saiyed and Mr. Mangesh Shinde i/b. Ms. Jhangiani Narula & Associates for Plaintiff.

Mr. Rashid Khan a/w. Ms. Priyanka Kothari i/b. Ms. Sumi Soman for Applicant / Defendant No.68.

**CORAM : G.S. KULKARNI, J.
DATE : 19th NOVEMBER 2019.**

P.C. :

1. Heard Mr. Narula learned Counsel for the Plaintiff and Mr. Khan for Applicant/Defendant No.68.

2. This is a Notice of Motion taken out by the Applicant, seeking condonation of delay of 2851 days in filing the written statement. I have perused the averments as made in the Affidavit in support of the Notice of Motion and more particularly the fact that the Applicant/Defendant No.68 had engaged an Advocate Mr. D.V. Singh, who had entered appearance on

behalf of the Applicant on 14 August 2012, however, it appears that for reasons which are also set out in para 6 of the Affidavit in support, no further steps were taken and the written statement could not be filed. There is an Additional Affidavit filed on behalf of the Applicant in pursuance of an Order dated 12 June 2019 passed by this Court. I have perused the averments as made in the additional Affidavit, which has explained in detail the circumstances under which the written statement could not be filed in time. I have also perused the reply as filed to this Affidavit on behalf of the Respondent – Plaintiffs. In my opinion, any inaction on the part of the Advocate ought not to prejudice the interest of Defendant No.68 to defend the Suit, who ought to have taken appropriate steps to file a written statement.

3. In the above circumstances, in my opinion, it is in the interest of justice and more particularly considering the averments as made in the Affidavit in support of the Notice of Motion of the Additional Affidavit that the delay in filing the written statement by the Applicant be condoned.

4. Let the written statement be placed on record by tomorrow. List the suit for further directions on 03 December 2019

5. Mr. Narula, learned Counsel for the Plaintiff, however, will be justified in contending that there needs to be an order of costs in the facts

and circumstances of the case. The written statement is accepted subject to cost Rs. 50,000/- to be paid to be Plaintiff within two weeks.

(G.S. KULKARNI J.)