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

**NOTICE OF MOTION NO.1577 OF 2019
IN
SUIT NO.283 OF 2017**

Lalbaugha Raja Sarvajaik Ganeshaustav
Mandal and 35 ors ... Applicants.
V/s.
Mahesh Tukaram Vengurlekar
and 5 others ... Defendants.

Mr. Manoj G. Sawardekar, for the applicants.
Ms. Priyanka C. Kothai, for plaintiff.

CORAM : N. J. JAMADAR, J.

DATE : 19th November, 2019.

PC. :

1] This Notice of Motion is taken out by the applicant-original defendant No.1 for quashing and setting aside the order dated 11th January, 2019, passed against defendant, thereby transferring the suit to “the list of undefended suits” and also for condonation of delay of 82 days in filing the present Notice of Motion.

2] As noted in the order of this Court, dated 11th January, 2019, the writ of summons was served on the defendants, postal acknowledgments evidencing the service of writ of summons were received, yet none appeared for the defendant. Hence, the suit was directed to be transferred to the list

of undefended suits.

3] The applicant avers in the application that the plaintiff has also filed a Criminal Complaint for defamation, apart from the the instant suit for damages. It is averred in the affidavit in support of Notice of Motion that the defendant No1, was under the impression that the writ of summons which was served on him on 17th May 2017, pertained to the said criminal proceeding pending before the learned Magistrate. It is further averred that on account of vacation, which followed, and poor medical condition, defendant No.1 could not approach his advocate and tender appearance. The defendant No.1 has, thus, sought condonation of delay in filing the present Notice of Motion.

4] The plaintiff has resisted the Notice of Motion by filing an affidavit-in- reply. The explanation sought to be offered by the defendant No.1 is stated to be unworthy of credence. The defendant was well aware of the proceeding and had appeared before the learned Magistrate in criminal proceeding and it does not appeal to human credulity that the defendant No.1 would miss to consult his advocate.

5] From the material on record, it becomes evident that the plaintiffs have taken umbrage over the publication of an article alleging financial irregularities in management of the affairs of the plaintiff No.1 trust, of which plaintiff Nos. 2 to 36 are trustees. The question of

defamation of plaintiff trust warrants adjudication. Simultaneously, Criminal remedy was also were invoked. Though the justification sought to be offered by the defendant No.1 may not carry much conviction, yet in order to advance the cause of justice and provide an effective opportunity to defend the suit, defendant No.1 is permitted to appear in the suit and tender written statement.

6] Hence, the Notice of Motion stands allowed.

7] The delay in filing the present Notice of Motion is condoned.

8] The order dated 11th January, 2019 directing the suit to be transferred to the list of undefended suits, is set aside.

9] The defendant No.1 shall pay costs of Rs.3,000/- to Plaintiff No.1 within a period of three weeks from today.

10] In the event of default in payment of costs, the Notice of Motion shall stand dismissed.

[N. J. JAMADAR, J.]