

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

NOTICE OF MOTION NO.1900 OF 2019

IN

COMMERCIAL SUIT NO.463 OF 2019

Dr.Amita Ashok Suchak)....Applicant/Defendant no.1

IN THE MATTER BETWEEN :

Suchak Hospital & Ors.)....Plaintiffs

V/s.

Dr.Amita Suchak & Ors.)....Defendants

Mr.Chirag Balsara a/w Mr.Sachin Mahagaonkar, Mr.Darshit Shah,
Mr.Jimish Shah and Mr.G.S.Sethi i/by Divya Shah Associates for
applicant.

Mr.Sharan jagtiani a/w Ms.Kritika Sethi i/by Cyril Amarchand
Mangaldas for defendant no.1.

CORAM : K.R.SHRIRAM,J

DATE : 20.8.2019

P.C.:-

1. Heard the counsel. This is an application by defendant
no.1 to condone the delay of 88 days beyond the 30 days period and
take the written statement on record. Order VIII Rule 1 of the Code of
Civil Procedure as amended reads as under :-

*“1. **Written statement** – The defendant shall, within
thirty days from the date of service of summons on
him, present a written statement of his defence :*

Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.”

2. The Court therefore, can grant an extension if the application is made within a further period of 90 days for reasons to be recorded in writing. There is a delay of only 88 days. I am inclined to condone the delay and direct the registry to take the written statement on record.

3. The reason why I am allowing the application is (a) plaint was lodged on 15.10.2018 and the writ of summons has been served on 1.4.2019 after delay of 5 & ½ months of lodging the plaint. Compared to that, 88 days is nothing. Of course, rule 87 of the Bombay High Court (O.S.) Rules, requires writ of summons to be served within six months but the fact that plaintiff has taken 5 & ½ months to serve writ of summons persuades me to grant 88 days extra to defendant no.1 to file written statement ; (b) secondly, this is a dispute between close family members. Plaintiff no.2 is the brother of deceased husband of defendant no.1. Plaintiff no.3 is wife of plaintiff no.2 ; and (c) This Court had also appointed Mediator in March-2019

[Hon'ble Mr.Justice S.J.Vazifdar (retd.)]. Mediation process is still going on. In the affidavit-in-support, applicant has given detailed reasons why the written statement could not be filed within 30 days of receiving the writ of summons. I am accepting all the reasons.

4. In the circumstances, application is allowed in terms of prayer clause-(a) which reads as under :-

“(a) That delay of about 88 days in filing Written Statement be condoned and Defendant No.1 be granted leave to file its Written Statement.”

5. Mr.Balsara for applicant presses for costs and submits that costs may be given to some charity. Applicant to pay sum of Rs.10,000/- to Free Ophthalmic Hospitals Society and this amount to be paid and compliance affidavit to be filed within 3 weeks from today.

The account details are as under :-

S.B.Account No.011710005364
IFSC Code : BKDN0450117
Dena Bank, Parel, Mumbai-400 012

Mr.Balsara states writ of summons have been served on the remaining defendants but there are no final reliefs sought against those defendants.

6. Suit be listed for directions on 4.10.2019. The time for Mediator to complete mediation extended upto 8.11.2019.

7. For compliance of record, registry to take the sur-rejoinder of plaintiff on record.

(K.R.SHRIRAM,J)