

Tauseef

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

**COMMERCIAL NOTICE OF MOTION (L) NO.1825 OF 2019
IN
COMMERCIAL IP (SUIT) NO.510 OF 2019**

Konkan Agro Marine Industries Pvt. Ltd. ...Applicant
(Org. Defendant)

IN THE MATTER BETWEEN:

Brihan Karan Sugar Syndicate Pvt. Ltd. ...Plaintiff

V/S.

Konkan Agro Marine Industries Pvt. Ltd. ...Defendant

Alankar Kirpekar, Shekhar Bhagat i/b. MAG Legal for Applicant /
Original Defendant.
Mr. Nikhil Sharma i/b. W.S. Kane & Co. for Defendant / Original
Applicant.

**CORAM : B. P. COLABAWALLA, J.
23rd SEPTEMBER 2019.**

P.C.:

1. This Notice of Motion has been filed seeking a
condonation of delay of 73 days for filing the written statement.
Since this is a Commercial IP Suit, the learned Advocate appearing
on behalf of the Defendant has stated that there is a delay of 73
days, but which falls within the statutory period of 120 days before
which the Defendant is required to file its written statement.

2. The learned Advocate appearing on behalf of the Plaintiff has strenuously opposed the aforesaid condonation of delay. He has stated that the affidavit-in-support does not make out any case for condoning the delay. He has further submitted that though the above Notice of Motion was lodged as far back on 29.07.2019, the same was served upon the Advocates for the Plaintiff only on 19.09.2019. He submits that, therefore, there is a delay even in the service of the Notice of Motion.

3. Having heard the learned Advocate appearing on behalf of the Plaintiff as well as the Defendant, I am satisfied that the ground for condonation of delay is made out. However, the delay shall be condoned subject to payment of costs.

4. In these circumstances, the Notice of Motion is allowed in terms of prayer clause (a) which read thus:

“(a) This Hon’ble Court be pleased to condone the delay of 73 days in filing the Written Statement.”

5. The Registry is directed to take on file the written statement of the Defendant subject to the Defendant paying costs of Rs. 25,000/- to the Tata Memorial Hospital, Mumbai within a period of two weeks from today and file on the record of this Court a receipt evidencing payment of the aforesaid costs.

6. Needless to clarify that, if the costs are not paid within the aforesaid period, this Notice of Motion shall stand dismissed without further reference to this Court. The Notice of Motion is accordingly disposed off.

7. All parties including Tata Memorial Hospital, Mumbai are directed to act on an authenticated copy of this order.

(B.P. COLABAWALLA, J.)