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

**COMMERCIAL NOTICE OF MOTION (L) NO.2198 OF 2019
IN
SUMMONS FOR JUDGMENT NO.18 OF 2019
IN
COMMERCIAL SUMMARY SUIT NO. 186 OF 2017**

Smt. Saroj Wd/o Omprakash Boob & Ors.	... Applicants
<i>In the matter between</i>	
Mr. Sajjad Ahmed Amir Sayyed & Anr.	... Plaintiffs.
<i>V/s.</i>	
Smt. Saroj Wd/o. Omprakash Boob & Ors.	... Defendants

Mr. Kirit J. Hakani for the Plaintiffs.
Ms. Prabha Uday Badadare for the Defendant Nos.1 to 5.

CORAM: R. I. CHAGLA, J.
DATE: 20TH SEPTEMBER, 2019

PC:-

1. Notice of Motion is not on board. Taken on board.
2. This Notice of Motion seeks condonation of delay in filing Affidavit in Reply to the Summons for Judgment. There appears to be a delay of almost four months from the service of the Summons for Judgment. The learned Counsel for Applicant has referred to Rule 221 of the Bombay High Court Rules and states that the Rule does not provide for any time within which the Affidavit in Reply is to be filed upon being served with the Summons for Judgment. She has stated that the time is only for

appearance of the Defendant upon being served with the writ of summons which is provided under Order 37 of the Code of Civil Procedure, 1908 and which shall be within 10 days from the service of the writ of summons. She has submitted that if there is any delay in filing the Affidavit in Reply, the same be condoned as records were not available and the search had to be conducted in respect of the transacted documents and hence there was delay in filing Affidavit in Reply. This been stated in paragraphs 5, 6 and 7 in the Affidavit in Support of the Notice of Motion.

3. The learned Counsel for the Plaintiff opposes the Notice of Motion. He states that if this Court is inclined to accept the Affidavit in Reply by condoning the delay, costs should be imposed on the Applicants. He further states that Order 37 Rule 3 (5) makes it clear that the Defendant was to file the Affidavit in Reply within 10 days from the service of the Summons for Judgment, disclosing such facts as may be deemed sufficient to entitle him to defend. Accordingly, time of 10 days has been prescribed under Order 37 Rule 3 (5) of the CPC and that there has been a delay of nearly four months in filing the Affidavit in Reply to the Summons for Judgment.

4. Having considered submissions, in my view there is clear delay in filing the Affidavit in Reply to the Summons for Judgment.

The learned Counsel for the Plaintiff is correct in his submissions that 10 days have been clearly prescribed by Order 37 Rule 3(5) of the CPC for filing the Affidavit in Reply by the Defendant upon the service with the Summons for Judgment. It appears that the Summons for Judgment was served on the Defendant in April 2019. Thus, there is a delay of nearly four months in filing the Affidavit in Reply from being served with the Summons for Judgment. The submission of the learned Counsel for the Applicant that Order 37 Rule 3 (5) only provides for a period of 10 days to enter the appearance of the Defendant is not correct as it also provides for a period of 10 days for filing Affidavit in Reply from being served with Summons for Judgment under Order 37 Rule 3(5).

5. Considering that, there is some justification given in the Affidavit in Reply for the delay, particularly, in paragraphs 5, 6 and 7, although not entirely satisfactory, the delay in filing the Affidavit in Reply is condoned subject to payment of Rs.50,000/- which shall be made payable to the Maharashtra State Legal Service Authority and shall be paid within a period of two weeks from the date of this Order.

6. Notice of Motion is accordingly made absolute in terms of prayer clause (a) subject to payment of costs.

7. The Applicant shall file the Affidavit in Reply in the Registry within a period of two weeks from the date of this Order and the Registry shall accept the same provided that costs have been paid as directed above.

8. The Summons for Judgment shall be placed for hearing on 7th October, 2019.

(R I. CHAGLA, J.)