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

**INTERIM APPLICATION NO. 1 OF 2019
IN
SUMMONS FOR JUDGMENT NO.84 OF 2019
IN
COMMERCIAL SUMMARY SUIT NO.887 OF 2019**

Nikhil Gandhi & Anr ... Applicant.

In the matter between

IL and FS Financial Services Ltd ... Plaintiff.

V/s.

Gujarat-Dwarka Porwest
Limited and ors ... Defendants

Mr. Ranjeev Carvalho a/w Mr. Sachin Chandarana, Ms. Shreya Anuwal, by Manilal Kher Ambalal & Co., for the plaintiff.

Mr. Kunal Mehta, a/w Ms. Anaisha Zachariah a/w Ms. Sonam Sethia a/w Ms. Ragini Jatha i/by Crawford Bayley & Co., for Defendants.

CORAM : N. J. JAMADAR, J.

DATE : 7th January, 2020.

PC. :

1] Heard the learned counsels for the parties.

2] This Interim Application is for condonation of delay of 18 days in filing affidavit-in-reply to the Summons for Judgment and seek leave to defend the Summary Suit.

3] The Summons for Judgment was served on defendants on 19th November, 2019. The defendant Nos. 3 and 4 were to file the affidavit-in-reply within 10 days i.e. by 29th November, 2019. However, Mr. Bhavesh Gandhi, the promoter of defendant No.2, had met with an accident and therefore, the defendant Nos. 3 and 4 could not file affidavit-in-reply. As the defendant Nos. 3 and 4 were prevented by a justifiable reason from filing reply within the stipulated period, the delay in filing affidavit-in-reply and seeking leave to defend be condoned, lest the defendant Nos. 3 and 4 would suffer irreparable loss.

4] The plaintiff has resisted the application by filing affidavit-in-reply. The plaintiff asserts that the averments in the application do not make out a case that the defendant Nos.3 and 4 were prevented by a cause which was beyond their control, from filing affidavit-in-reply. Thus, the plaintiff has prayed for rejection of the prayer for condonation of delay.

5] Having regard to the period of delay i.e., 18 days, which cannot be said to be inordinate, and the reason assigned in the application for condonation delay, and also to advance the cause of substantial justice by providing effective opportunity of hearing to the defendants on the question of leave to defend, the application for condonation of delay deserve to be allowed. Hence, the following order.

Order

- i] The application for condonation of delay in filing affidavit-in-reply to the Summons for Judgment and to seek leave to defend, stands allowed in terms of prayer clause (a).
- ii] The defendants are permitted to file affidavit-in-reply to the Summons for Judgment.
- iii] The Interim Application stands disposed of.

[N. J. JAMADAR, J.]