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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO.114 OF 2020

Sukhjendra Kumar Arora

... Petitioner

Versus

Swati Spentose Private Limited and Ors.

...Respondents

Mr. Makarand Bakore, for the Petitioner.

Mr. Darshan Mehta a/w Ms. Shruti Dalal i/b M/s. Dhruve Liladhar and Co., for the Respondent No.1.

CORAM : REVATI MOHITE DERE, J.

DATE : 14th JANUARY, 2020

P.C. :

1. Heard learned counsel for the parties.

2. Rule. Rule is made returnable forthwith with the consent of the parties and is taken up for final disposal. Mr. Mehta waives service on behalf of the Respondent No.1.

3. By this petition, the petitioner has impugned the order dated 19th November, 2019, passed by the learned Ad-hoc Judge, City Civil and Sessions Court, Greater Bombay, below Notice of Motion No.3589 of 2019 in Special Civil Suit No. 1997 of 2018, by which, the Notice of Motion

seeking condonation of delay of 227 days in filing the written statement, was rejected.

4. Learned Counsel for the Petitioner states that the delay in filing the written statement, infact was not 227 days but, only 4 days. Learned counsel relied on the bailiff's report, which is on page 16 and 17 of the petition, to show that the RPAD sent to the petitioner was returned by the postal authorities with the remark 'unclaimed'. He submitted that admittedly, the petitioner was residing at the relevant time in USA and the passport bears the testimony of the same. Learned counsel also relied on the affidavit filed by the petitioner, in support of the Notice of Motion, stating the reasons for filing the written statement belatedly. He submitted that the delay is neither intentional nor deliberate but for bonafide reasons. He submitted that infact there was a delay of only 4 days in filing the written statement. He submitted that if the date of service of written statement on the Respondent no.1 is taken into consideration, the delay is only of 4 days, whereas, if the date of registration of the Notice of Motion is taken into consideration, the delay is of 227 days.

5. Learned Counsel for the Respondent Nos.1 opposed the petition. He submitted that no interference was warranted in the impugned

order.

6. Perused the papers as well as the impugned order. The Respondent No.1 is the original plaintiff, who has filed a Suit for compensation and damages in the City Civil and Sessions Court, Greater Bombay, being Special Civil Suit No. 1997 of 2018. It appears that writ of summons was issued on or about 10th August, 2018. A perusal of the bailiff's report which is on page 16 shows that the RPAD sent to the petitioner is returned with the remark 'unclaimed'. Admittedly the petitioner was in USA at the relevant time. From the affidavit filed by the petitioner in support of the Notice of the Motion, it appears that whilst the petitioner was in USA, some one accepted the service on his behalf, however, the said person could not understand the legal proceedings and hence did not inform the petitioner about the same. In the said affidavit the petitioner has set out the steps taken and why the written statement could not be filed within time. It appears that the Notice of Motion seeking condonation of delay in filing the written statement was served on the Respondent No. 1 on 2nd August, 2019. If the said service is considered, there is delay of 4 days. It appears that the Notice of Motion was registered after 57 days. The affidavit filed in support of the Notice of Motion shows that the petitioner has assigned sufficient and cogent reasons for condoning

the delay.

7. The learned Judge having regard to the affidavit in support of the Notice of Motion and having regard to the bailiff's report and other circumstances, ought to have condoned the delay.

8. Accordingly, the Petition is allowed and disposed of in aforesaid terms. Rule is made absolute in terms of prayer clauses 'd' and 'e'.

9. The Petitioner to pay costs of Rs.4,000/- to the Respondent No.1, within two weeks from today.

10. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.