

Anand

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

WRIT PETITION NO. 126 OF 2020

Hemant Sharma	.Petitioner
Age : 72 yrs, Occu : Service	
Indian Inhabitant, having its	
address at 72, Neman Building,	
Sukh Sagar, Chowpatty,	
Mumbai – 400 007.	

Vs.

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| 1. Swati Spentose Private Limited | .Respondents |
| A Company Incorporated under the | |
| Provisions of the Companies Act, | |
| 1956 And having its registered | |
| office at 114, Marine Chambers, | |
| 11, New Marine Lines, | |
| Mumbai – 400 020. | |
| 2. Sukhjendra Kumar Arora | |
| Indian Inhabitant, having its address at | |
| Flat No. 501, Dhruv Heights, Sector 10, | |
| Kharghar, Navi Mumbai – 410 201. | |
| 3. Molclone Labs Private Limited | |
| 73, Kasi Estate, 2 nd Street, | |
| Jafferkhanpet, | |
| Chennai – 600 083. | |

Mr. Makarand Bakore & Mr. Nachiket Patkar i/b. Mrugank & Basutkar
Law Partners, Advocate, for the Petitioner
Mr. Darshan R. Mehta i/b. M/s. Dhruve Liladhar & Co., Advocate, for
the Respondent No. 1

CORAM : REVATI MOHITE DERE, J.

DATE : 16.01.2020

ORAL ORDER

. 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 at the stage of admission.

3. By this Petition, the Petitioner has impugned the order dated 22.11.2019 passed by the learned Ad-Hoc Judge, City Civil & Sessions Court, Greater Bombay below Notice of Motion No. 4312 of 2019 filed in S. C. Suit No. 1997 of 2018, by which the learned Judge was pleased to dismiss the Respondent No. 1's/ Original Plaintiff's Notice of Motion seeking condonation of delay of 337 days in filing the Written Statement.

4. Learned counsel for the Petitioner submits that the Petitioner was employed with the Plaintiff – Company and was working under the instructions of the Respondent No. 2 / Original Defendant No. 1. He submits that after the Respondent No. 1 filed his suit for damages and compensation as against the Petitioner/ Original Defendant No. 2 & Original Defendant No. 3, the Petitioner approached the Respondent No. 2, who stated that he would assist him in approaching an Advocate and in connection with the said matter. According to the learned counsel

for the Petitioner, the Respondent No. 2 was staying in USA and was not present in Mumbai at the relevant time and as such, on his return, he contacted an Advocate, resulting in a delay of 337 days in filing the Written Statement. He submits that the delay is neither deliberate nor intentional but is occasioned due to circumstances set out in the Affidavit in support of the Notice of Motion.

5. Learned counsel for the Respondent No. 1 (Original Plaintiff) opposed the Petition and submitted that no interference is warranted in the impugned order.

6. Perused the papers as well as the impugned order which is on page No. 19 of the Petition. The Respondent No. 1 (Original Plaintiff) has filed a suit, being S. C. Suit No. 1997 of 2018 for damages and compensation in April, 2018. Writ of Summons in the said suit was issued on the Petitioner on 20.08.2018. It appears that pursuant to the service of Writ of Summons upon the Petitioner, the Petitioner approached the Respondent No. 2 (Original Defendant No. 1), as the Petitioner was working under the instructions of the said Respondent No. 2. It appears that it is not seriously disputed by the learned counsel for the Respondent No. 1 that the Respondent No. 2 at the relevant time was in the USA. It appears that the Respondent No. 2 on his arrival in India, approached the Advocate, after which the Petitioner

filed his Written Statement alongwith a Notice of Motion seeking condonation of delay of 337 days in filing the Written Statement. In a similar Petition between the Respondent Nos. 1 & 2, this Court (Coram : Revati Mohite Dere, J.) vide order dated 14.01.2020 allowed W. P. No. 114 of 2020 filed by Respondent No. 1 by condoning the delay caused in filing the Written Statement in the suit.

7. For the reasons set out in the Affidavit in support of the Notice of Motion, the learned Judge ought to have allowed the Notice of Motion and condoned the delay caused in filing the Written Statement. Accordingly, the impugned order dated 22.11.2019 passed by the learned Ad-Hoc Judge, City Civil & Sessions Court, Greater Bombay below Notice of Motion No. 4312 of 2019 filed in S. C. Suit No. 1997 of 2018 is quashed & set aside, subject to the Petitioner paying costs of Rs. 15,000/- to the Respondent No. 1. Costs to be paid within two weeks from today. The Written Statement to be filed by the Petitioner on the next date before the trial Court. Rule is made absolute in terms of prayer clauses (b) & (c).

8. Accordingly, the Petition is disposed of.

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

(REVATI MOHITE DERE, J.)