

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
INTERIM APPLICATION NO. 1 OF 2020
(Delay Condonation)
IN
SUMMONS FOR JUDGMENT NO.28 OF 2019
IN
COMM SUMMARY SUIT NO. 280 OF 2019**

Amit Jagannath Shetty & anr.

...Applicants/
Defendants

In the matter between

Maharashtra State Road Development
Corporation

...Plaintiff

Versus

Amit Jagannath Shetty & anr.

...Defendants

Mr. Chirag Mody, a/w J. Kapadia, Shrey Shah, Sanidhya
Arora, i/b Little and Co., for the Plaintiff.

CORAM: N. J. JAMADAR, J.

DATED : 28th FEBRUARY, 2020

PC:-

1. Not on board. Mentioned. Taken on board.
2. This application is taken out for condonation of delay of 218 days in filing affidavit-in-reply to the summons for judgment.
3. In the application it is sought to be contended that the summons for judgment was not duly served in as much as it was not served through the Court upon the defendants but it was served on the Counsel for the defendants on 8th July, 2019.

It is further contended that the defendants could not file the affidavit-in-reply within the stipulated period as the father of the defendants was seriously ill, hospitalized in the intervening period, and ultimately died on 13th September, 2019. Thus, there was delay in filing an affidavit-in-reply.

4. The plaintiff has resisted the application by filing an affidavit in opposition to the prayer for condonation of delay. The plaintiff asserts that the ground of non-service of the summons for judgment is factually incorrect. The ground of illness of the father of the defendants is also unworthy of acceptance as it cannot account for the entire period of delay of 218 days. There is, thus, no justifiable reason which would warrant condonation of delay.

5. Heard the learned Counsels for the parties.

6. The ground of non-service of the summons for judgment on the defendants is of no assistance to the defendants as the defendants categorically assert that upon service of the summons for judgment on their advocates, they were informed that the defendants were required to file an affidavit-in-reply and seek leave to defend. Thus, the defendants – applicants cannot draw much mileage point from the fact that the

summons for judgment was served on the advocate for the defendants.

7. The reason of illness of the father of the defendants, sought to be assigned, however, deserves a liberal consideration. It is trite that the courts lean in favour of condonation of delay so as to advance the cause of substantive justice; by adjudication of the matter on merits. There are averments in the application to the effect that the father of the defendants was critically ill and ultimately expired on 13th September, 2019. The reasons assigned by the defendants thus cannot be said to be malafide or unreasonable. There does not seem to be an element of unpardonable negligence on the part of the defendants. Thus, I am persuaded to condone the delay and allow the defendants to file an affidavit-in-reply.

8. Hence the following order:

- (i) The interim application stands allowed subject to payment of costs of Rs.30,000/- by the applicants – defendants to the plaintiff within two weeks from today.
- (ii) The defendants – applicants are permitted to file affidavit-in-reply.

(iii) The plaintiff is at liberty to file an affidavit-in-rejoinder, if any, to the affidavit-in-reply filed by the defendants, within a week thereafter and serve its copy on the defendants.

9. Interim application stands disposed of.

10. List the suit on 20th March, 2020.

[N. J. JAMADAR, J.]