

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 1145 OF 2017
IN
SUIT NO. 875 OF 2015

Jyoti Prakash Barat & ors.	...Applicant
In the matter between	
Mr. Sadanand R. Dalvi	...Plaintiff
Versus	
Mrs. Jyoti Prakash Barat & ors.	...Defendants

Mr. Kundalal Patil, i/b M/s. Vyas K. Bhalwal, for the plaintiff.
Mr. Arvind Aswnai, i/b J. G. Reddy, for Defendant nos.1 to 5.

CORAM: N. J. JAMADAR, J.
DATED : 12th FEBRUARY, 2020

PC:-

1. Mr. Patil, the learned Counsel for the plaintiff has tendered an affidavit in reply in opposition to the notice of motion. The affidavit in reply is taken on record.
2. Heard the learned the Counsels for the parties.
3. This notice of motion is taken out by defendant no.1 to set aside the order dated 5th December, 2016, passed by the Prothonotary and Senior Master, whereby, in view of default on the part of the defendants to file the written statement within the stipulated period, the suit was directed to be transferred to the list of undefended suit, and for condonation of delay of 93

days in filing the written statement on behalf of defendant nos.1 to 5.

4. In the affidavit in support of notice of motion the defendants contend that the defendants could not file the written statement within the stipulated period, as during the pendency of Notice of Motion No.1712 of 2015, in the instant suit, there were negotiations between the parties to arrive at an amicable settlement. The Court had also noted the said fact in the order dated 11th August, 2016 in Notice of Motion No.1712 of 2016. In the meanwhile, the suit came to be listed before the Prothonotary on 5th October, 2016 and defendant nos.1 to 5 were directed to file written statement on or before 5th December, 2016, failing which the suit would stand transferred to the list of undefended suit. The defendants became aware of the said order when the plaintiff took out a notice of motion for *ex parte* decree. Hence, the order passed by the Prothonotary on 5th December, 2016, be set aside lest the defendants would suffer an irreparable loss.

5. In the affidavit-in-reply the plaintiff has contested the reasons sought to be ascribed by the defendants for condonation of delay in filing the written statement. It is averred that, in fact, the writ of summons was served on all the

defendants, except defendant no.4, on 26th November, 2015. Thus, there is delay of more than 93 days in seeking permission to file the written statement. The negotiations for the settlement were at the instance of the defendants as is evident from the order dated 11th August, 2016. Hence, the application be rejected.

6. The learned Counsels have advanced submissions on the lines of averments in the affidavit in support of, and in opposition to, the notice of motion.

7. The claim of the defendants that there were negotiations for settlement finds necessary support in the order passed by this Court on 11th August, 2016, in Notice of Motion No.1712 of 2015. At whose instance, the negotiations for settlement were initiated is not of material significance. The fact remains that the parties were exploring the possibility of settlement. In this backdrop the reasons ascribed by the defendants cannot be said to be unworthy of credence. It is quite possible that on account of negotiations for settlement, the defendants did not initiate the requisite steps to file the written statement within time. The inconvenience caused to the plaintiffs can be addressed by directing the defendants to pay the costs.

8. Hence, the following order.

- (i) The notice of motion stands allowed.
- (ii) The order dated 5th December, 2016 passed by the learned Prothonotary and Senior Master of transferring the suit to the list of undefended suits, stands set aside.
- (iii) The delay in filing the written statement stands condoned, and the defendants are permitted to file the written statement within two weeks subject to payment of costs of Rs.20,000/- to the plaintiff, within the same period.

9. The notice of motion stands disposed of.

[N. J. JAMADAR, J.]