

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

906 WRIT PETITION NO.8198 OF 2020

ASHA BHANUDAS LOKHANDE
VERSUS
ANIL DYNANESHWAR KARDILE

...
Advocate for Petitioners : Mr. Shaikh Tarek Mobin H.
Advocate for Respondent : Mr. D. R. Markad h/f
Mr. A. N. Kakade

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CORAM : AVINASH G. GHAROTE, J.
DATED : 1st JULY, 2021.

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PER COURT :

1. Heard Mr. Mobin Shaikh, learned counsel for the petitioner and Mr. D.R. Markad learned counsel holding for Mr. Kakade, learned counsel for the respondent sole.
2. In a summary suit based upon a cheque the trial court has condoned the delay in filing the application for leave to defend and has also granted leave to defend being aggrieved by which the present petition has been filed. Mr. Mobin Shaikh, learned counsel for the petitioner submits, that the delay could not have been condoned as no valid reasons were given and so also the unconditional leave to defend could have been granted. He invites my attention to para 13 of the impugned order which are the only reasons given by the learned trial court for grant of

leave to defend, which are to the effect that since the defendant has denied all the allegations, therefore, leave to defend could be granted, and submits that this cannot be the reason for grant of leave.

3. Mr. D. R. Markad, learned counsel for the respondent defends the order passed by the learned trial court contending that under Sub-Rule 7 of Order 37 of CPC, the court for sufficient reasons, is empowered to condone the delay and the reasons shown were sufficient. He further submits, that the court has rightly granted unconditional leave to defend, as all the allegations in the plaint were denied.

4. With the assistance of the learned counsel, I have perused the applications at Exhs-8 & 12. The delay in filing the application is 28 days, for which justification has been found by the learned trial court, being ignorance of law. Though this cannot be a ground to accept the delay, however, in view of the fact, that in the summons served upon the defendant, the date of appearance was mentioned as 29/01/2020, on which date, the application for leave to defend was filed, the same is justified reason for allowing the application for condonation of delay.

5. In so far as the granting of unconditional leave is concerned, mere denial of the plaint averments cannot be held to be a ground sufficient to grant unconditional leave to defend. The trial court, has to form an opinion that a substantial defence has been raised, which would entitle the grant of unconditional leave. For this the learned trial court cannot look into the written statement accompanying the application for leave to defend, but has only to look into the contents of the application to leave to defend. Bare perusal of the application for leave to defend, indicates that there is absolutely nothing therein which could be said to form a substantial defence as contemplated by the first proviso to Sub-Rule 5 of Order 37 of CPC. This being the position, the impugned order so far as it relates to grant of unconditional leave, cannot be sustained, and has to be set aside. The petition is therefore partly allowed. The application for grant of unconditional leave, is accordingly dismissed. Rule accordingly.

(AVINASH G. GHAROTE, J.)

vsm/-