

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 118 OF 2020

Mr. Shivam Kamat,
s/o Manoj Kamat, 25 years of age, r/o
'Ashiana', D3/S4, Behand Galaxy
Hospital, Duler, Mapusa, Bardez,
Goa.

..... Petitioner

V e r s u s

Kodewprk United LLP,
A Limited Liability Company,
Incorporated under the LLP Act,
2008 Having its registered address at
Penha de Franca, Porvorim, Bardez,
Goa, Through its Designated Partner,
Mr. Judith Fernandez, s/o Donald
Fernandez, major of age, r/o. H. No.
804/2/8A/7, Sapna Garden, Chogm
Road, Porvorim, Bardez, Goa.

..... Respondents

Ms. Kalpa Govenkar, Advocate for the Petitioner.

Mr. Venkatesh Ameya Nayak Salatry, Advocate for the Respondents.

Coram :- M. S. SONAK, J.

Date : 30th June, 2021

ORAL JUDGMENT

1. Heard Ms. Kalpa Govenkar, learned Counsel for the Petitioner and

Mr. Salatry, learned Counsel for the Respondents.

2. Rule.

3. Rule is made returnable forthwith at the request and consent of the learned Counsel for the parties. Learned Counsel for the Respondents, waives notice.

4. The challenge to this Petition is to the order dated 27.12.2019, by which, the learned Trial Judge has refused to condone the delay of 260 days in filing the written statement.

5. The record indicates that the Petitioner filed two applications seeking extension of time to file written statement and the same were granted since the time was extended up to 90 days in all. The third application of the Petitioner which was filed beyond 90 days, was rejected.

6. The Petitioner did not immediately file for recall of this order and leave to file written statement. Rather, the Petitioner filed such application with a delay of 260 days and it is this application which was dismissed by the impugned order.

7. Ms. Govenkar, the learned Counsel for the Petitioner submits that the Petitioner was a young person of 23 years and, therefore, had certain difficulties in grasping the issues raised in the plaint and as also the legal procedures involved in defending the claim. He submits that there were some problems faced by the Advocate of the Petitioner as well and for all these reasons, there was delay. She submits that though the delay is substantial, the same is for bonafide reasons and this is a fit case where the delay was required to be condoned, if necessary, by imposing some costs on the Petitioner.

8. Mr. Salatry, the learned Counsel for the Respondents, submits that the conduct of the Petitioner has been to simply protract the proceedings. He submits that even after the issues were framed in the suit, no application was filed for leave to file the written statement. He submits that on account of the Petitioner's negligence, the progress in the suit has been unnecessarily delayed. He points out that now the Petitioner seeks to raise a counter claim which is almost five times the claim raised by the Respondent-Plaintiff. He, therefore, submits that this Petition be dismissed.

9. Rival contentions now fall for my determination.

10. The record does bear out that there was delay of 260 days in filing the application for leave to file written statement beyond 90 days. However, some reasons have been set out by the Petitioner.

11. Thus, there is nothing on record to hold that the reasons set out are malafide or that the sole purpose of the Petitioner was to protract the proceedings. The Petitioner has pleaded his own experience particularly in legal matters. The Petitioner has also pointed out that the issues raised in the plaint were of such complex nature that even his Advocate was unable to immediately grasp the issues and file response.

12. Ordinarily, this cannot be a very good reason because parties are expected to be diligent. However, in the peculiar circumstances of the present case and having regard to the age of the Petitioner and his candidness, the delay can be condoned provided the Petitioner pays substantial costs to the Respondents for ultimately delaying the proceedings.

Since the Petitioner seeks to raise a counter claim, it is only appropriate that the costs are substantial.

13. Therefore, with a view to grant an additional opportunity to the Petitioner to file his written statement, the impugned order is set aside and the delay in seeking leave to file the written statement is hereby condoned. Since the same reason applies for non-filing of the written statement within the prescribed period of 90 days, leave is now granted to file the written statement.

14. Ms. Govenkar, learned Counsel, pointed out that the written statement was already filed along with the application seeking condonation of delay. Accordingly, this written statement will now have to be taken on record and the suit will have to proceed accordingly. However, all this is subject to the Petitioner paying costs of ₹ 50,000/- to the Respondents within a period of two weeks from today.

15. These costs will have to be paid to the Respondent or deposited before the Trial Court within two weeks from today. It is only if the costs are paid

or deposited, can the Petitioner have the benefit of the present order. Otherwise, this Petition shall be deemed to have been dismissed without any further reference to this Court.

16. If the costs are deposited, then, the learned Trial Judge will permit the Respondent herein to withdraw the same unconditionally.

17. The Rule is made absolute in the aforesaid terms.

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

M. S. SONAK, J.