

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5458 OF 2021

Yogesh Patel and ors

.. Petitioners

Versus

Arzoo Com Pvt.Ltd

.. Respondent

...

Mr.Vishal Kanade i/b Divya Shah Associates for the petitioners.
Mr. Mutahar Khan for the respondent.

CORAM: BHARATI DANGRE, J.

DATED : 22nd NOVEMBER, 2021

P.C:-

1 The petitioners are aggrieved by the order dated 12th August 2021 passed by the City Civil and Sessions Court on a Notice of Motion No.555 of 2021 taken out for condoning the delay in filing the written statement in the Commercial Suit, which came to be rejected on the ground that the defendants have not only failed to give reasonable and sufficient reasons and deliberately avoided to file written statement within stipulated period but also caused the delay in deciding the Suit and the delay justice to the plaintiff. Notice of Motion is supported by an affidavit filed on 1/2/2021.

Finding that there is no sufficient and reasonable cause for filing the written statement within the period stipulated

period, the Notice of Motion is rejected.

2 A brief mention of the necessary facts would suffice before I deal with the impugned order. Special Civil Suit No.2975 of 2018 is instituted by the defendants which is for recovery of amount. Noting that the said Suit is falling within the purview of the Commercial Court as on 2015 by an order dated 7th February 2020, the Suit was converted into Commercial Suit and was directed to be re-registered and re-numbered as a Commercial Suit.

Pertinent to note that in the Special Civil Suit, the defendants had already filed a Notice of Motion No.3987 of 2019, seeking condonation of delay in filing the written statement and on the date on which the Suit was converted into a Commercial Suit, the same was pending.

3 On 18th February 2020, the learned Judge, Civil Court, Dindoshi referred to the order dated 7/2/2021, under which the Suit was converted into a Commercial suit and as regards the Notice of Motion filed by the defendant in the Special Civil Suit, it was recorded that it do not survive. Though the counsel for defendant sought permission to file fresh Notice of Motion, the learned Judge was of the opinion that as limitation of 120 days in commercial suit will commence from the date of conversion of the Suit, as such, no question arise about granting

any liberty to file the Notice of Motion afresh. The pending Notice of Motion No.3987/2019 was therefore, permitted to be withdrawn and disposed of. For further steps, the matter was directed to be listed on 13th April 2020.

4 Pertinent to note that the period of initial 30 days in filing the written statement in the Commercial Suit expired on 8th March. On 30th January 2021, a Notice of Motion No.555 of 2021 was filed supported by an affidavit which sought an explanation for the 7 days delay if at all to be counted, since it was pleaded that the written statement was ready and was affirmed on 30th January 2021, and in the wake of the order of the Hon'ble Supreme Court which had extended the limitation with effect from 15th March 2020 to 14th March 2021, it was pleaded that the delay in filing the written statement being unintentional and since the defendants were refrained by unavoidable circumstances of Covid Pandemic and since the Advocates could not physically attend the Court and file written statement, the delay which had occasioned was sought to be condoned by setting aside the order dated 14th January 2021. It is on this Notice of Motion the impugned order has been passed.

5 The learned Judge while recording that a liberal view and discretion has to be exercised, depending upon the facts and circumstances of each case and by keeping in mind the justice to

one party should not cause injustice to other, referred to the chronology of events, including the earlier Notice of Motion bearing No.3987/2019, wherein the delay in filing the written statement was sought to be justified.

Recording that the present Suit came to be proceeded without written statement and was fixed on 23rd February 2021, the defendants suddenly appeared on 11th February 2021 and have taken out a Notice of Motion when the matter was fixed for evidence of the plaintiff.

As far as the justification presented for condoning the delay, the learned Judge has recorded that the defendants have not filed any document to show the facts which are pleaded; being that they are all non-residents of India and reside in different cities in the USA and had an erratic schedule. Finding no material to support the said pleadings, the learned Judge recorded that the Suit is for recovery of huge amount of Rs.98,53,499/- along with interest and is pending since 2018, rejected the Notice of Motion.

6 On hearing the learned counsel for the petitioner and respondent, and on perusal of the various orders by the Hon'ble Apex court, specifically in the wake of the Pandemic which had grappled the entire globe and had brought the functioning of the Government machinery as well as the judiciary to a stand still, and which constrained the highest Court of the land to take suo-

motu cognizance of the situation arising out of the challenges faced by the country on account of the Pandemic which was posing difficulties for the litigants across the country, issued various directives to the effect of exclusion of certain period while computing the period of limitation which included the limitation prescribed under Section 12-A of the Commercial Courts Act. True it is, that the applicant is not strictly covered within the said period commencing from 15th March 2020, as this period of filing the written statement within 30 days expired on 8th March 2021. However, the learned Judge has failed to take into account that from, 15th March 2020, in any case, the period stands excluded and the reality is that from 22nd March 2020, everything had come to a grinding halt, which even prevented him from filing the application for an extension on expiry of period of 30 days which in any case, is within a discretion of the learned Judge of the Commercial Court to extend till 120 days on sufficient cause being shown.

7 In any case, in the Notice of Motion, the defendant has offered an explanation which has been perfunctorily rejected by the learned Judge on the count that it lack bonafide. In the interest of justice, since it can be noticed that the entire functioning of the Courts came to a stand-still for a period of almost a year, which prompted the Apex Court as well as this Court to a Full Bench to extend the time lines, including the

period of limitation in instituting proceedings, and in such a situation, the Court cannot be expected to have a pedantic approach but in this particular scenario, when the higher Courts have adopted a liberalistic approach, in my considered opinion, the learned Judge has erred in passing the impugned order by refusing to condone the delay of 7 days, since thereafter, the applicant was already entitled for protection of exclusion period from 15th March 2020 to 14th March 2021.

However, since this caused inconvenience to the plaintiff who has instituted the Suit in the year 2018, while setting aside the order, I deem it expedient to grant costs of Rs.50,000/- to the plaintiff as a pre-condition for setting aside the 'No ws' order.

Costs shall be paid within a period of two weeks from today. So also, the written statement shall be filed within a period of two weeks.

8 Necessarily, the impugned order is quashed and set aside subject to the stipulation of payment of costs as directed above.

The concerned Court shall permit written statement to be filed within a period of two weeks from today.

SMT. BHARATI DANGRE, J