

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 12243 OF 2017

Mahendrakumar Gupta Petitioner

Vs.

Sayed Faiyaz Ali Respondent

Mr. Rahul Singh a/w Pranali Raut i/by Mithilesh S. Singh for Petitioner
Ms. Priyanka Rangnekar h/for M.H. Belosay for Respondent.

Coram : NITIN W. SAMBRE, J.

Date : 23rd JULY, 2021

P.C.:

1. This petition is by the Plaintiff in Summary Suit No. 470 of 2014. According to Petitioner, under Order 37, Rule 3(4), Summons for Judgment was required to be moved within six months. Since there was an inordinate delay of 15 months and 13 days, a Notice of Motion No. 2381 of 2016 is taken out by the Petitioner for condonation of delay, which is rejected by the impugned order dated 13th July, 2017. As such, this petition.

2. Mr. Singh, learned counsel appearing for the Petitioner would urge that even if the Petitioner/complainant has attended the proceedings initiated under Section 138 of Negotiable Instruments Act from 12th February, 2014 to 21st June, 2016, the Court below has committed an error in considering the same, adverse to the interest of the Petitioner as the considerations in civil and criminal proceedings are altogether different. Apart from above, Mr. Singh would inform that at times, Petitioner was in personal difficulty and some time due to absence of his Advocate delay is caused. According to Mr. Singh by putting the present petitioner certain conditions of payment of costs, delay needs to be condoned.

3. I have considered the aforesaid submissions of learned counsel appearing for the Petitioner in the backdrop of Rule 119 of the Bombay City Civil Court Rules 1948. Sub-Rule 4 of Rule 119 contemplates filing of Summons for Judgment within six months so as to apply for a decree within a period of service of notice on the defendant.

4. In case if such Summons for Judgment is not moved, the consequences will be the suit be switched to a regular trial mode.

5. As such, it is not the fact that the Petitioner will not get an opportunity to pursue the suit claim on merits. No case is made out for condonation of delay in moving Summons for Judgment at a belated stage without explaining the delay of 15 months and 13 days. The Court below while rejecting the Notice of Motion for condonation of delay was sensitive to the fact that Petitioner has failed to establish sufficient cause in support of prayer for condonation of delay. The Petitioner has chosen to appear before the Court dealing with the case under Negotiable Instruments Act proceedings amongst the same parties, however, the Petitioner has avoided the civil proceedings.

6. In the aforesaid backdrop, in my opinion, no case for interference in extra ordinary jurisdiction is made out. The petition as such fails, stands dismissed.

(NITIN W. SAMBRE, J.)