

Santosh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**INTERIM APPLICATION NO. 894 OF 2021
IN
NOTICE OF MOTION (L) NO. 1010 OF 2019
IN
COMM SUMMARY SUIT NO. 136 OF 2021**

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Nafees Ahmed Khan	...Applicant
In the matter between	
Jayesh Vinod Tanna	...Plaintiff
Versus	
Nafees Ahmed Khan	...Defendant

Mr. Syed Nabeel Ali, a/w Ragib S.K., for the Applicant/
Defendant.

Mr. Aurup Dasgupta, a/w Sonam Ghiya, i/b Jhangiani Narula
& Asso., for the Respondent/Plaintiff.

CORAM: N. J. JAMADAR, J.

DATED : 25th OCTOBER, 2021

PC:-

1. Heard the learned Counsels for the parties.
2. This is an application for condonation of delay in taking out the application to restore the Notice of Motion (L) No.1010 of 2019 and also to restore the said Notice of Motion, which came to be rejected for non-compliance with the office objections, by the Prothonotary and Senior Master, by order dated 4th July, 2019.
3. The said Notice of Motion (L) No.1010 of 2019 was taken out by the applicant – defendant to condone the delay of one day

in filing affidavit seeking leave to defend the summary suit. It seems that on account of failure on the part of the applicant – defendant to remove the office objection the matter was placed before the Prothonotary and a peremptory order was passed to remove the office objection on or before 1st August, 2019, lest the Notice of Motion would stand rejected under Rule 986 of the Original Side Rules.

4. The learned Counsel for the plaintiff submitted that on the ground of the inadvertence on the part of the Counsel for the applicant, the said Notice of Motion could not be diligently prosecuted. The applicant – defendant has a strong case on merits and if the interim application is not allowed and Notice of Motion is not restored to file, the applicant would suffer serious prejudice.

5. In opposition to this, the learned Counsel for the plaintiff stoutly submitted that the instant case is one of the sheer negligence and there are no grounds, much less justifiable, to condone the delay and restore the Notice of Motion to file. Inviting the attention of the Court to the time-lag and absence of satisfactory explanation in the application, the learned Counsel for the plaintiff prayed for dismissal of the application.

6. Evidently, when the Notice of Motion (L) No.1010 of 2019 was taken out there was a delay of only one day in filing an

affidavit seeking leave to defend the summary suit. By the passage of time, however, huge delay has occurred to the prejudice to the plaintiff. None-the-less, it would be expedient in the interest of justice to allow the applicant – defendant to seek condonation of delay in filing affidavit to seek leave to defend. The inconvenience caused to the plaintiff can be compensated by awarding costs.

7. Hence, the following order:

: O r d e r :

- (i) The application stands allowed.
- (ii) The delay in taking out the application stands condoned.
- (iii) Notice of Motion (L) No.1010 of 2019 stands restored to file, subject to payment of costs of Rs.25,000/- by the defendant – applicant to the plaintiff, within a period of two weeks from today.
- (iv) In the event of default in payment of costs, this order would stand vacated automatically without further reference to the Court.
- (v) The application stands disposed of.

[N. J. JAMADAR, J.]