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

**APPEAL FROM ORDER NO.982 OF 2022
WITH
CIVIL APPLICATION NO.100 OF 2022**

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Northern India Alcobru Systems,
through Partner Mr. Yashraj Barman ..Appellant
VS.

Ion Exchange (India) Limited
through Mr. Krushna Chandra Rath,
Senior Executive (Legal) ..Respondent

Mr. R. P. Ojha i/b. Mr. S. P. Shukla for appellant.
Mr. Haresh K. Menghani for respondent.

CORAM : M. S. KARNIK, J.

DATE : NOVEMBER 9, 2022.

P.C. :

1. Heard learned counsel for the parties.
2. The challenge in this Appeal is to an order dated 20.06.2017 passed by the City Civil Court, Greater Bombay. A summary suit was filed by the respondent (original plaintiff) for recovery of an amount of Rs.18,15,289/- with interest under Order XXXVII of the Code of Civil Procedure, 1908. The appellant-original defendant filed an appearance within the time. The Summons for Judgment was taken out

by the plaintiff. The reply to the Summons for Judgment was not filed by the defendant within time. After a delay of 555 days, the defendant requested that the reply be taken on record. The trial Court by the impugned order rejected the notice of motion on the ground that the delay is not properly explained.

3. It is pointed out by learned counsel for the defendant that the parties were negotiating a settlement. It is pointed out that factually it is correct that on the some dates the advocate for the defendant did not appear but this was in view of the impression that the settlement talks are in progress. Learned counsel for the defendant submitted that an opportunity to contest the Summons for Judgment should not be denied as they are even willing to compensate the plaintiff by paying cost. The delay, according to the learned counsel for the defendant is not intentional.

4. Learned counsel for the respondent on the other hand invited my attention to the finding of the trial Court. It is submitted by him that there is hardly any explanation for

the delay of 555 days in filing the reply. It is further submitted by him that at every stage the defendant has attempted to protract the litigation and even their advocate was not present on several dates when the matter was listed. It is submitted that the Summary Suit is of the year 2014 and the same is still at the stage of Summons for Judgment. He prayed that the Appeal be dismissed.

5. I have gone through the impugned order. The delay in filing the reply to the Summons for Judgment on the part of the defendant is of 555 days. The trial Court has recorded that the settlement talks were in progress. The trial Court is justified in observing that the settlement talks being in progress is not a ground for the defendant to have not filed the reply. In my opinion, an opportunity needs to be given to the defendant to file reply by condoning the delay as the delay coupled with the circumstances on record is not such that the same does not deserve to be condoned even by imposing sufficient cost. There is no dispute that the settlement talks were in progress. It is after the settlement talks failed, that the defendant applied for filing of the reply.

From the facts on record, it is not possible for me to infer that there has been any intentional default on the part of the defendant in filing the reply to the Summons for Judgment. In my opinion, the Appeal From Order deserves to be allowed upon imposing cost of Rs.25,000/-. The cost to be paid to the plaintiff within a period of two weeks from today. The payment of cost is condition precedent to taking the reply to the Summons for Judgment on record.

6. The Appeal From Order is allowed subject to cost as indicated above.

7. The Notice of Motion No.4034 of 2016 is allowed. The delay in filing the reply in Summons for Judgment is condoned. The defendant is allowed to submit the affidavit-in-reply in Summons for Judgment No.86 of 2015 within a period of three weeks from today.

8. Considering that the suit is of the year 2014, the learned trial Judge is requested to expedite the suit and decide the same preferably within a period of one year from today.

9. Learned counsel on behalf of the defendant

undertakes to co-operate with the trial Court in expeditious disposal of the suit and will not seek unnecessary adjournments.

10. Civil Application stands disposed of.

(M. S. KARNIK, J.)