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

INTERIM APPLICATION NO. 3388 OF 2022

IN

COMMERCIAL IP SUIT NO. 286 OF 2018

ICICI Bank Limited

...Applicant

IN THE MATTER BETWEEN :

Bharat Bhogilal Patel

...Plaintiff

Versus

ICICI Bank Limited

...Defendant

* * *

- Mr. Anand Mohan, Ms. Shruti Dasondi and Ms. Aditi Palnitkar i/by Khimani & Associates, for Applicant/Defendant.
- Mr. Ketan Parekh i/by K. R. Parekh & Co., for Plaintiff

* * *

CORAM : MANISH PITALE, J

DATE : 02ND DECEMBER, 2022.

P. C. :

1. Heard learned Counsel for the parties. By this application the Defendant is seeking condonation of delay of 866 days in filing the written statement. Although the present Suit is filed in the Commercial Division of this Court, there is no serious dispute raised on behalf of the Plaintiff that the position would be governed by judgment of this Court in the case of Bharat Bhogilal Patel Vs. Leitz Tooling Systems India Pvt. Ltd.¹, whereby it was held that the amended provisions of the Code of Civil Procedure, 1908 (CPC) introduced by Commercial Courts Act, would be applicable to the Commercial disputes only of a specified value. It is undisputed that

¹ 2019 SCC Online Bom. 890

the present Commercial Suit is not of a specified value and therefore, the rigour of the amended provisions of the CPC as per the Commercial Courts Act, would not be applicable.

2. The learned Counsel for the Defendant fairly submits that although in the application it is stated that there is delay of 826 days in filing the written statement, the actual duration of the delay is 866 days.

3. The learned Counsel for the Applicant/Defendant invited attention of this Court to the contents of the application and submitted that although the writ of summons was served in the first week of April, 2018, but copy of the plaint and annexures were not served and it was only after the attorneys filed Vakalatnama for the Applicant, sometime in the last week of June, 2018, that the plaint along with documents became available to the Defendant. The further period of delay from June, 2018 onwards was sought to be explained on the basis that there was reorganization in the Corporate structure of the Defendant, and that from March, 2020, the covid-19 pandemic had hit the nation, creating further difficulties for the defendant to place the written statement on record.

4. The learned Counsel for the Defendant further submitted that this Court has repeatedly held that in an adversarial system of

the litigation, the endeavor of the Court ought to be to decide the matters on merit, for which completion of pleadings would be necessary. It is also emphasized that the Division Bench of this Court in the case of Bitesh Hanumantrao Sagar Vs. Virgina Anthony Misquitta & Ors.,² held that the Original Side Rules of this Court concerning the regulation of procedure would govern the present question as to whether the written statement could be taken on record, despite delay on the part of the Defendant in filing the same. It was submitted that this Court had on many occasions condoned the delay, upon imposing reasonable costs on the Applicant. Reference was also made to the order dated 16th August, 2017, passed in Notice of Motion No. 1033 of 2016 in Suit No. 1790 of 2012, Shri. Vasant Rama @ Dhobi Bavise Vs. Dattatraya Laxman Bhavise & Ors, emphasizing that the costs of Rs.2,500/- were imposed for condonation of delay of 869 days.

5. The learned Counsel appearing for the Plaintiff submitted that the application did not reveal sufficient cause for condonation of delay and that therefore, this Court may dismiss the application. On the aspect of costs, the learned Counsel for the Plaintiff left the matter to this Court.

6. This Court has considered the averments in the application and

2 2012(5) Mh.L.J. 613

the contentions raised by the learned Counsel appearing for the Applicant/Defendant. Although there may be some substance in the contention raised on behalf of the Defendant, that the period of delay ought to be calculated from June, 2018, as the plaint and the documents were actually received by the Defendant in June, 2018, the reasons stated for explaining the delay in filing the written statement from June, 2018, do not appear to be sufficient. But, it has been repeatedly held that procedure is the handmaiden of justice and that in the adversarial system followed in our Courts, it is always advisable that matters are decided on merits after giving appropriate opportunity to the parties to complete their pleadings and to lead evidence.

7. Another aspect of the matter is that there was nothing for the Defendant to gain by filing the written statement after delay of 866 days. Hence, this Court is inclined to give an opportunity to the Defendant to place its written statement on record, so that the *lis* can be decided on merits.

8. There can be no doubt about the fact that the extent of delay is considerable and that therefore, appropriate costs ought to be imposed while allowing the present application. Even in the case of Bitesh Hanumantrao Sagar Vs. Virgina Anthony Misquitta & Ors., (supra), while condoning the delay, this Court imposed costs of Rs.

75,000/- on the applicant/Defendant to be paid to the Plaintiffs. The extent of delay in the said matter was about 23 years and it is for this reason that learned Counsel for the Applicant/Plaintiff has relied upon the order of this Court in the case of Shri. Vasant Rama @ Dhobi Bavise Vs. Dattatraya Laxman Bhavise & Ors, wherein costs of Rs. 2,500/- were imposed while condoning the delay of 869 days.

9. This Court has considered the aforesaid proceedings. The determination of the quantum of costs, while allowing the said application, necessarily depends on the facts and circumstances of each case. This Court is not inclined to take a lenient view in this matter, particularly because the Defendant in the present suit is ICICI Bank Ltd. and it is expected of such an entity to be diligent in attending such matters, as it has dedicated staff to take care of such contingencies, including legal proceedings. No special circumstance is brought on record to show any leniency in the matter, insofar as the applicant is concerned.

10. A submission was sought to be made on behalf of the Defendant that since the suit in the present case has been valued by Plaintiff itself at about Rs. 20,000/-, the quantum of costs ought to be determined by taking the aforesaid fact into account. The learned Counsel for the Plaintiff is justified in bringing to the notice of this Court that the suit pertains to alleged infringement of patent and

there is a specific statement made in the plaint that the Plaintiff undertakes to pay further Court Fees as may be determined by this Court, depending upon determination of the extent of damages.

11. Considering the aforesaid circumstances, this Court is inclined to allow present application, subject to payment of costs.

12. Accordingly, the application is allowed, the delay of 866 days in filing the written statement is condoned, subject to the Defendant paying costs of Rs. 50,000/- to the plaintiff within six weeks from today. Upon payment of costs, the written statement shall be taken on record by the office of this Court. Application stands disposed of.

(MANISH PITALE, J.)