

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1373 OF 2024

Citichem India Ltd

.. Petitioner

Versus

Sanjay Surendra Darooka & Anr.

.. Respondents

.....

- Mr. Rajender Singh Saluja for Petitioner
- Mr. I.Z. Merchant for Respondents

.....

CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 05, 2024

P. C.:

1. Mentioned out of turn.
2. Heard Mr. Saluja, learned Advocate for Petitioner and Mr. Merchant, learned Advocate for Respondents.
3. This Writ Petition takes exception to the order dated 10.11.2023 passed in Notice of Motion No. 3006/2023 in Commercial Summary Suit No. 87/2023. The Notice of Motion was filed for condonation of delay in entering the appearance on behalf of Defendant. Mr. Merchant would submit that appearance is required to be tendered within 10 days. There is admittedly delay of 106 days which Mr. Saluja in his usual fairness would not deny. The issue before me is whether the learned Trial Court has rightly considered sufficient cause provided by the Defendant.

4. Mr. Merchant has drawn my attention to the affidavit-in-reply in support of the Motion which is appended at page Nos. 258-262 of the Writ Petition and drawn my immediate attention to paragraph No. 2 thereof wherein it is contended by Petitioner that when the bailiff of the Court had visited the address to serve a copy of the writ of summons, the concerned person instead of accepting the summons inadvertently refused to accept the same since the responsible person was not available resultantly the bailiff returning back with the writ of summons and filing of appropriate report before the Court as “refused”. The issue pertaining to entering the appearance i.e. filing of vakalatnama is answered by Petitioner by stating that the Advocate on behalf of the Petitioner / Defendant had in fact appeared on 18.07.2023 and filed his memo of appearance and on his oral request, Plaintiff was also directed to serve copy of the plaint along with its exhibits to the Advocate but the same was not given. Though this is refuted by Mr. Merchant what is important is entering the appearance within the stipulated period of 10 days and the reason advanced for the same was there was a marriage in the family of the Advocate appearing for the Defendant resulting in delay. It is trite that no litigant should suffer due to the dereliction on the part of his Advocate. Though I have noted Mr. Merchant’s objection in maintaining challenge to the impugned order dated 10.11.2023 and

in support of the said order, I am inclined to permit the Writ Petitioner before me to enter his appearance and dispense with the reasons given in the impugned order dated 10.11.2023. Resultantly the order dated 10.11.2023 is set aside and the Notice of Motion No. 3006/2023 is allowed. The vakalatnama i.e. appearance on behalf of Defendant shall be filed within a period of one week from today, if not so filed. The order for allowing Notice of Motion No. 3006/2023 is not unconditional and Petitioner is directed to pay costs of Rs. 5000/- to Respondent No. 1 in view of the delay which has been caused within a period of one week from today.

5. With the above directions, Writ Petition is disposed.

Amberkar

[MILIND N. JADHAV, J.]

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by RAVINDRA
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