

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 17838 OF 2024
ALONGWITH
INTERIM APPLICATION NO. 10377 OF 2024

1. Mewar Hi Tech Engineering Ltd.

a limited company having its office at 1,
Hawa Magri Industrial Area, Sukher,
Udaipur – 313 001 (Raj)

2. Mahendra Singh Singhvi, an adult
Director of Mewar Hi Tech Engineering Ltd.,
Having address 172-A, Fatehpura Sukhadia
Circle, Udaipur – 313 004 (Raj)

3. Pratap Singh Talesara,
an adult
Director of Mewar Hi Tech Engineering Ltd,
Having address 185, Bhupalpura,
Udaipur – 313 001 (Raj)

4. Virendra Prakash Rathi, an adult
Director of Mewar Hi Tech Engineering Ltd,
Having address 214-C, Sardarpur,
Udaipur – 313 001 (Raj)

5. Chatrsing Harisingh Rathore, an adult
Director of Mewar Hi Tech Engineering Ltd,
Having address 3-C, Ambavgarth,
Near Kurabad House, Amba Mata,
Udaipur, Shatri Circle, Udaipur – 313 001 (Raj)

6. Reena Rathore, an adult
Whole time, Director of Mewar Hi Tech
Engineering Ltd, having address 419,

Teachers Colony, Amby Mata Scheme
Udaipur – 313 001.

7. Vaibhav Singh Rathore, an adult
Director of Mewar Hi Tech Engineering Ltd.,
Having address 3-C, Abavgarh,
Near Kurbad
House, Udaipur, Shastri Circle,
Udaipur – 313 001 (Raj).

...Petitioners

Vs.

Laherchand B. Shah (deceased deleted)
Thr. Its LRS

1 a) Kamal Laherchand Shah,
An adult of India
Inhabitant Age :- 52 years, Occupation:
Business
Having address at : 601/6A,
Tribute Rajkamal Studio Compound,
Rajkamal Studio Compound, Rajkamal
Lane, Parel, Mumbai – 400 012.

...Respondent

Mr. Ajay Talreja a/w Ms. Bhavana B. Jain	Advocate for the Petitioners
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CORAM : S. M. MODAK, J.

DATE : 16th DECEMBER 2024

ORAL JUDGMENT :-

1. Heard learned Advocate for the Petitioners/Defendants.
2. Though the Court notice is not served, the Petitioner has served

Respondent-Plaintiff. Affidavit of private service is already filed on record. Defendant was served through registered post, acknowledgment due. He has not appeared. Hence, taken up for final hearing.

3. The only issue arisen in this petition is whether the Defendant has explained the delay in filing of the written statement. They have filed the notice of motion for condonation of the delay. They averred the delays is for 30 days. The Notice of motion is on page no. 30. There is supporting affidavit on page no. 34. The trial Court while dismissing the Notice of Motion on 22.03.2024, at page no. 13 has observed “*delay is not for 30 days but 52 days*”. The trial Court in para no. 5 has quoted the relevant dates as follows:-

- a) Summons for judgment was decided on 02.05.2023 and
- b) leave to defend was granted subject to deposit of Rs. 2,50,000/-. It is to be deposited within eight weeks and thereafter written statement is to be filed within four weeks.
- c) The Notice of Motion No. 4113 of 2023 was filed for extension of time. It was allowed on 14.09.2023.
- d) On 24.11.2023 defendant actually deposited the amount.

- e) On 23.12.2023 the period of four weeks for filing written statement expired.

That is how the trial Court has said when the Notice of Motion was filed in the month of February 2024, the delay is not for 30 days, but 52 days. In the affidavit, the Defendant has stated they were granted adjournment subject to payment of cost of Rs. 2,000/- and Defendants have shown readiness to file written statement.

4. When the affidavit is read, there is no reason for delay in filing written statement. In para no. 3, they have only mentioned that no prejudice loss and damage will be caused to the Plaintiff, if delay is condoned. It is true the procedure for summary suit is different to certain extent than the procedure for ordinary suit. Herein conditional leave was granted and though not in time, subsequently, amount is deposited. Part of the order is complied with and which is not complied is “*not filing written statement in time*”.

5. This Court feels subject to imposing cost of Rs. 10,000/-, the Notice of Motion can be allowed. The effect of refusing to condone the delay will amount to losing an opportunity to contest the suit. Though served Respondent has not appeared.

6. Pending interim application, if any, also stands disposed of.
7. I am inclined to allow the Writ Petition. Hence, following order is passed:-

ORDER

- (i) The order passed in Notice of Motion No. 1112 of 2024 on 22.03.2024 passed by the City Civil Court, Mumbai is set aside.
 - (ii) The Notice of Motion No. 1112 of 2024 is allowed and delay of 52 days caused in filing written statement is condoned subject to payment of cost of Rs. 10,000/- within two weeks from today to the Plaintiff.
 - (iii) Trial Court to take written statement on record.
8. Accordingly, Writ Petition is disposed of.

[S. M. MODAK, J.]