

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

**Interim Application No.15703 of 2024
With
Interim Application No.15189 of 2024
In
Civil Revision Application No.465 of 2024**

Shree Kishan Joshi ... Applicant
V/s.
Manoj Jagdish Prasad Saraf ... Respondents.

Mr. A.M. Saraogi	Advocate for the Applicants in both matters.
Mr. Girish Kedia a/w. Krushang Kedia	Advocate for Respondents in both matters.

CORAM : S.M. MODAK, J

DATE : 16 December 2024.

P.C. :

By way of a praecipe moved by the applicants-defendants in a disposed of Civil Revision Application, both interim applications are taken on Board.

2. By way of Interim Application No.15703/24, the applicant-defendant is praying for condonation of delay of 17 days in filing written-statement and seeking liberty to file it before the trial Court. Whereas, by way of Interim Application No.15189/2024, the applicant-defendant is praying for granting 15 days grace period to deposit the 3rd installment of Rs.6,25,000/-.

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3. There is a strong opposition for granting both the applications on behalf of the respondents-plaintiff.

4. I heard both the learned Advocates. Both of them have invited my attention to the order passed by this Court on 13 September 2024 on the basis of draft Minutes of Order. That draft was tendered in a pending revision application.

5. That revision was preferred against the order passed by the Court of City Civil in a Commercial Suit filed by the respondent-plaintiff. Leave to defend was granted subject to deposit of certain amount.

6. That is how both the parties have entered into certain terms. It is relating to deposit of total amount of Rs.37,50,000/-. Both the parties have agreed upon the installments which consist of 6 installments. Out of them the applicant-defendant have cleared the two installments. The third installment could not be deposited. That is why one interim application.

7. The written-statement could not be filed in time. That is why second interim application is filed.

8. The learned Advocate for the respondent invited my attention to Clause Nos. (a) and (b) and the consequences if there is a single default as provided in Clause No.(e). According to him when the

parties have agreed upon the installments, the Court cannot extend the period. It is true Clause No.(b) also says about no further extension will be granted. It is also true Clause No. (e) mentions about the right of the plaintiff to insist upon deposit of entire amount of Rs.75/- lacs.

9. There is no dispute that the applicant-defendant has committed default in depositing the third installment. So the issue is whether extension can be granted or whether right is accrued to the respondent-plaintiff to insist upon deposit of Rs.75/- lacs.

10. The learned Advocate Saraogi has invited my attention to the averments in the relevant paragraphs from both the applications. Even though the draft Minutes of Order mention that extension cannot be granted, the power of the Court to grant extension if the case is made out cannot be taken away by any of the party.

11. After reading the relevant paragraphs from both the applications, I am convinced that the applicant-defendant is certainly entitled for extension. Even learned Advocate Saraogi has shown readiness to even pay cost. It is true when the applicant-defendant has agreed to pay installments in time and once he has not adhered to the time limit, today it cannot be said that respondent-plaintiff has got a right to insist upon deposit of entire amount. Ultimately, the Court has to balance the rights of both the parties. So subject to payment of certain amount, I am inclined to allow both the

applications. Hence, the following order is passed:

ORDER

- (i) Both the interim applications are allowed.
- (ii) The applicant is granted two days time (because 15 days time is already over) from the date of uploading of order to deposit 3rd installment of Rs.6,25,000/- before the City Civil Court subject to payment of cost of Rs.25,000/- to the plaintiff directly.
- (iii) The 17 days delay in filing written-statement is condoned. The applicant is permitted to file written-statement within two days from the date of uploading of order subject to payment of Rs.25,000/- to the plaintiff-respondent directly.

12. It is made clear that the applicant-defendant may not be under the impression that similar orders will be passed in future if there is a default.

(S.M. MODAK, J.)