

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

INTERIM APPLICATION NO. 2803 OF 2024
IN
COMMERCIAL SUMMARY SUIT NO.68 OF 2023

AXIS BANK LIMITED

)...APPLICANT
ORG. DEFENDANT

IN THE MATTER OF :

STERLING AND WILSON RENEWABLE ENERGY)
LIMITED AND ANR

)...RESPONDENTS/
PLAINTIFFS

V/s.

AXIS BANK LIMITED

)...DEFENDANT

Mr. Shyam Kapadia a/w Ms. Sonali Agarwal, Ms. Tanjul Sharma i/b
Dhruve Liladhar & Co., Advocate for the Applicant/Org.Defendant.

Ms. Shraddha Achaliya a/w Mr. Shrikant Seegarla, Mr. Swapnil
Shikhare i/b RMG Law Associates, Advocate for the
Respondents/Original Plaintiffs.

CORAM : ABHAY AHUJA, J.

DATE : 9th OCTOBER 2024

PC. :

1. This Interim Application seeks condonation of delay of 60 days in
e-filing leave to defend to the Summons for Judgment in the above
Suit.

2. Pursuant to order dated 14th August, 2024, today when the matter is called out the Applicant-Bank has filed rejoinder *inter alia* clarifying that the filing of the Vakalatnama on 5th March, 2024, by the Applicant as set out in Exhibit A (at page 24) of the reply is actually the filing of the note of appearance of by the Applicant in the Summons for Judgment as can be seen from the remarks column in the extract of the Miscellaneous Information on the website of the High Court of Bombay relating to this case which has also been annexed as Exhibit D (at page 57 of the Rejoinder) and not the actual filing of the Vakalatnama as the Vakalatnama in the matter had already been filed on 3rd January, 2024. Mr. Shyam Kapadia, learned Counsel appearing for the Plaintiffs-Respondent confirms this fact and submits that the controversy with respect to the filing of the Vakalatnama be set at rest and that this Court proceed to hear the Interim Application seeking condonation of delay of 60 days in e-filing the leave to defend.

3. Accordingly, this Court proceeds to consider this Interim Application.

4. It is not in dispute that the Summons for Judgment in the matter was registered on 9th February, 2024. That the Advocates for the

Plaintiffs served a copy of the Summons for Judgment along with affidavit in support dated 30th January, 2024 to the Applicant's Advocates on 12th February, 2024. Under Rule 3(5) of Order XXXVII of the Code of Civil Procedure, 1908, the Applicant/Defendant had 10 to file affidavit in reply seeking leave to defend.

5. It has been submitted on behalf of the Applicant that since the Summons for Judgment was received in February 2024 and that the Bank officials were involved in the financial year ending activities they were not able to give instructions to file Application for leave to defend in time.

6. It has been further submitted on behalf of the Applicant Bank that between 27th March, 2024 to 7th May, 2024 correspondence was exchanged between Applicant's Advocates and the Plaintiff's Advocates regarding the inspection of documents referred to and relied upon by the Plaintiffs. It has been submitted on behalf of the Applicants that the first round of inspection took place on 12th April, 2024, after the same was re-scheduled twice on Plaintiffs request. On 12th April, 2024, out of 40 documents exhibited in the Plaint and/or documents for which the Plaintiff had craved leave to refer to rely upon, the Plaintiffs

only offered originals of 21 documents for inspection. It is submitted that the Plaintiffs informed the Applicant that the Plaintiffs do not have in their possession originals of 14 documents. The Plaintiffs also informed that inspection of 5 documents would be provided when the same became available to the Plaintiffs. It is submitted that therefore, the inspection remained incomplete. However, despite the same the Applicant managed to e-file their affidavit in reply within 11 days from the date of taking inspection.

7. It is submitted that the process of inspection was hindered by the Plaintiff's conduct. That the inspection remains incomplete due to the Plaintiffs failure to provide full access to all necessary documents which has been recorded in letter dated 7th May, 2024 from the Applicant's Advocates to the Plaintiffs' Advocates.

8. Ms. Shraddha Achaliya, learned Counsel for the Plaintiffs would submit that the delay is neither intentional nor deliberate there is sufficient cause explained for the delay and therefore this Court condone the delay in filing the Application for leave to defend.

9. On the other hand, Mr. Shyam Kapadia, learned Counsel appearing for the Plaintiffs submits that considering that the Applicant is a private commercial bank operating as a major financial institution having a dedicated legal team to look after all its legal disputes, it cannot be said that the said team was involved in the financial year ending activities and therefore the reason given by the Applicant that the officials of the Applicant Bank were preoccupied in the year ending closing activities is baseless.

10. Mr. Kapadia, learned Counsel would further submit that with respect to the delay caused due to the inspection sought for by the Applicant is concerned, the said documents are correspondence exchanged between the Plaintiffs and the Defendants which were in the possession of the Applicant and that the inspection was therefore not necessary.

11. Mr. Kapadia, learned Counsel would finally submit that in any event if this Court is inclined to condone the delay in applying for the leave to defend, costs may be imposed.

12. I have heard learned Counsel for the Parties.

13. It is not in dispute that inspection of documents had been sought by the Applicant which was granted only on 12th April, 2024. That the same was after being re-scheduled twice on the request of the Plaintiffs. That the Advocates for the Applicant have even after filing of the reply on 23rd April, 2024 recorded in a communication dated 7th May, 2024 that inspection still remained incomplete. These facts are not in dispute. In my view, there appears to be merit in the submission on behalf of the Applicant that the inspection sought for by the Applicant was hindered by the Plaintiffs' conduct.

14. However, it is yet to be established that the documents in respect whereof inspection was sought were not correspondence exchanged between the Plaintiffs and the Applicant, which may have been in possession of the Applicant and also it has not been established that the Applicant did not have a dedicated legal team to look after the dispute and/or was involved in the financial year ending closing activities and therefore, I propose to impose costs while allowing this Interim Application seeking condonation of delay in filing leave to defend.

15. Accordingly this Interim Application is allowed in terms of prayer clauses (b) and (c), subject to payment of costs of Rs.50,000/- by the

Applicant to the Plaintiffs within a period 2 weeks from the date of uploading of this order.

16. Once the costs are paid, Registry to accept the Affidavit in Reply dated 23rd April, 2024 on the file/record of the Summons for Judgment. Rejoinder to the Summons for Judgment, with a copy to the other side, be filed within a period of 2 weeks of the taking on record of the affidavit in reply.

17. List the Summons for Judgment for hearing on **27th November, 2024.**

(ABHAY AHUJA, J.)