

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIRCUIT BENCH AT KOLHAPUR

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8408 OF 2024

Kulswamini Industries,
Pro. Pra. Sneha Abhay Mete,
Age. 43 Years, Occu.: Business,
R/o. Gat No.750, Plot No.16,
Ganeshnagar, Ichalkaranji,
Tal. Hatkanangale, Dist. Kolhapur.Petitioner

Vs.

Kedarnath Firewood Depo.,
Pro. Pra. Ravindra Krushna Magdum,
Age: 39 Years, Occu.: Business,
R/o. 21/247, Behind Jaywantrao Awale
Banglow, Jawaharnagar, Ichalkaranji,
Tal. Hatkanangale, Dist. Kolhapur.Respondent

Mr. Nikhil N. Pawar, for the Petitioner.
Mr. Omkar Nagwekar, for the Respondent.

CORAM : S. G. CHAPALGAONKAR, J.

DATED : 29th SEPTEMBER 2025

JUDGMENT :-

1. Present Writ Petition takes exception to order dated 12th October 2023 passed below Exhibit 15 as well as order dated 13th March 2024 passed below Exhibit 21 in Summary Civil Suit No.116 of 2022, pending before learned Civil Judge, Senior Division, Ichalkaranji.

2. Petitioner is original defendant in suit. Respondent instituted summary suit under provisions of Order 37 Rule 2 of Code of Civil Procedure seeking recovery of amount to the tune of Rs.12,58,090/- from Petitioner.

3. Petitioner was served with summons for judgment on 1st June 2023. It was necessary for her to appear before Court and put up her defense within ten days. However, because of family dispute, she could not present herself before the Court. Therefore, she filed application below Exhibit 15 to condone delay caused for her appearance. However, trial Court rejected said application vide order dated 12th October 2023. Petitioner then filed application for review below Exhibit 21. However, same is also rejected vide order dated 13th March 2024. Hence, this Writ Petition.

4. Mr. Nikhil Pawar, learned Advocate appearing for Petitioner submits that Petitioner has not disputed that she was served with summons for judgment on 1st June 2023 and it was incumbent to move application seeking leave to defend within ten days from the date of receipt of summons for judgment. He would submit that as per Order 37 Rule 3(5) of CPC, Court has power to condone delay on

sufficient cause being shown. In present case, Petitioner has made out sufficient cause for the delay of about 111 days. The trial Court adopted hyper-technical approach and rejected her application to condone delay.

5. Learned Advocate appearing for Respondent vehemently opposed the application. He would submit that looking to object of provisions under Order 37 of CPC, inordinate delay cannot be condoned in absence of sufficient cause. Application below Exhibit 15 is vague and cryptic and sufficient cause is not discernible from contents thereof. He would, therefore, justify the order impugned.

6. Having considered submissions advanced, it can be observed that defendant is proprietor of Kulswamini Industries. The suit is instituted for recovery of more than Rs.12 Lakhs. Admittedly, Petitioner was served with summons for judgment on 1st June 2023 and it was necessary for her to cause appearance within ten days and, if so desired, file an application for leave to defend within ten days. However, she defaulted to cause her appearance within stipulated period. Subsequently, she filed application under Order 37 Rule 3(7) to condone delay.

7. Application below Exhibit 15 incorporates reason that Petitioner had matrimonial dispute with her husband. Therefore, she had left the matrimonial home and residing at Parli Vajjnath. Once she returned back, she took necessary steps for filing application to defend the suit. Her non-appearance is unintentional. It is true that reason as stated in application *sans* details, as to when Petitioner left her matrimonial home and when she returned back. However, fact remained that she had given reason of matrimonial dispute. Reason as stated in the application is not specifically controverted by Respondent. It would be harsh to hold that reason as given in application is improbable or false. Although, the provision under Order 37 of CPC is laudable and in absence of sufficient cause, extension of period to file application for leave to defend summary suit cannot be permitted. In facts of the case, this Court finds that sufficient reason is given for condoning delay of 111 days. However, inconvenience caused to Respondent needs to be compensated by imposing appropriate costs while condoning delay.

8. In result, the following order:

ORDER

- i) The Writ Petition is allowed in terms of prayer clause (b), subject to condition that Petitioner deposits costs of Rs.25,000/- before the trial Court within a period of four weeks from today.
- ii) On deposit of costs, same be released in favour of plaintiff.
- iii) In case of failure to deposit costs within stipulated period, impugned order shall govern proceeding.
- iv) The Writ Petition is accordingly disposed of.

(S. G. CHAPALGAONKAR, J.)

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RAJU
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GAIKWAD
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