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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

IN ITS COMMERCIAL DIVISION

COMMERCIAL SUMMARY SUIT NO. 24 OF 2024

Arora Fibres Limited

... Plaintiff

Versus

Shree Tirupati Greenfield Developers and others ... Defendants

WITH

SUMMONS FOR JUDGMENT NO. 1 OF 2025

IN

COMMERCIAL SUMMARY SUIT NO. 24 OF 2024

WITH

INTERIM APPLICATION NO. 7147 OF 2025

IN

SUMMONS FOR JUDGMENT NO. 1 OF 2025

.....

Ms. Ankita Singhania (through VC) alongwith Ms. Samridhi Lodha and Ms. Aishwaryajeeta Tawde instructed by Kanga & Co., Advocate for the Plaintiff.

Mr. Saurabh Oka, Advocate for the Defendants/Applicant in IA-7147-2025.

.....

CORAM : ABHAY AHUJA, J.

DATE : 10 DECEMBER 2025

PC. :

Interim Application No.7147 of 2025 :

1. This Interim Application seeks condonation of delay of 59 days in filing leave to defend.

2. Mr. Oka, learned Counsel, appearing for the Defendant, submits that 10 days' period to file leave to defend ended on 5th May 2025. That since the Applicant No.2 shifted office from the 1st week of May till 10th May 2025, the papers could not be traced and therefore, proper instructions could not be given to the Advocate. That thereafter, the Applicant No.2 fell ill on 13th May 2025 and was advised bed rest till 19th May 2025. It is only thereafter the Applicant No.2 met his Advocate that the leave to defend was prepared and notarized on 30th May 2025 and handed over to the Advocate for filing on 31st May 2025. It is submitted that the Advocate sent his Clerk for filing the same, however due to inadvertence and oversight the same was not e-filed. It is submitted that when the Applicants enquired from the Advocate in and around 30th June 2025, it was realized that the same had not been filed. Mr. Oka submits that thereafter the same was immediately filed. That therefore there has been a delay in the matter which is due to inadvertence and not intentional or deliberate.

3. Mr. Oka submits that the additional 30 days delay in filing, is due to mistake of the Advocate and the client should not be made to suffer for the same. That the Applicants/Defendants have a good case on merits and that if the Application is not allowed and the delay is not condoned, the Defendants would suffer grave and irreparable loss. Mr.

Oka submits that this Court may condone the delay on reasonable terms that this Court may deem appropriate to impose.

4. Ms. Singhania, appearing for the Plaintiff through video-conferencing submits to the orders of the Court, however submitting that the reply has been filed and to that rejoinder has also been filed.

5. I have heard the learned Counsel.

6. Before proceeding to consider the delay that has sought to be explained on behalf of the Applicant, this Court considers it necessary to clarify that although it is settled law that delay caused due to the Advocate or his Clerk should not prejudice the client and the client should not be made to suffer for the same, however, the said principle was never intended to be used by the Advocates arguing the matters on behalf of the litigants seeking to condone such delays as a matter of right. Condonation of delay for sufficient cause is a discretion that the Courts exercise in the given facts and circumstances of the case. To say that the additional 30 days delay is due to the mistake of Advocate and that the client should not be made to suffer for the same is completely against the principle that proceedings have to be filed in accordance with timelines provided by the statute. No special exemption has been provided for the delay caused by the Advocates/Clerks in any statute nor is there are any case law supporting the same. If this is the manner

in which delays are expected to be condoned then the very purpose of statutory timelines would be defeated. This much for now.

7. Coming back to the explanation of the Applicant that due to shifting of office, papers could not be traced and instructions could not be given to the Advocate for the period between 1st May 2025 till 10th May 2025 and thereafter the Applicant No.2 fell ill on 13th May 2025 and was advised bed rest till 19th May 2025, after which he met the Advocate and leave to defend was prepared and notarized and handed over to the Advocate for filing on 31st May 2025, appears to be a reasonable explanation for the said delay.

8. The explanation thereafter that the Applicant's Advocate's Clerk due to inadvertence and oversight did not e-file it, is something that cannot be accepted by the Court. It is the duty of the Advocates and Clerks to attend to the matters of their clients with due care and diligence and to simply say that the same could not be filed due to inadvertence and oversight is no explanation at all.

9. Having said this, I am also conscious that this Application has been made in a summary suit where a summary procedure with strict time lines is prescribed for summary disposal of suits, however, Order XXXVII Sub-rule 7 of Rule 3 of the Civil Procedure Code, 1908 itself empowers the Court to condone the delay if sufficient cause is shown

by the Defendant for delay in applying for leave to defend. The Courts lean in favour of condonation of delay so as to advance the cause of substantive justice on the premise that the procedure, which is a handmaiden of justice, should not be allowed to score a march over substantive justice.

10. Since it has been submitted that the Applicants have a good case on merits and this Court is also of the view that the litigants should not be non suited for the delay which can be compensated with costs, therefore, subject to payment of costs of Rs.25,000/- as suggested by Ms. Singhania, learned Counsel for the Plaintiff, to the Society for Rehabilitation of Crippled Children (SRCC), Mumbai, within a period of two weeks, the delay of 59 days in filing the application for leave to defend is condoned.

11. Subject to the above, let the leave to defend be numbered and listed on board.

12. The Interim Application accordingly stands allowed and disposed as above.

(ABHAY AHUJA, J.)