

CNR NO. MHSCA3-001514-2017

IN THE COURT OF SMALL CAUSES AT BOMBAY

(BANDRA BRANCH)

ORDER BELOW EXHIBIT -9

IN

L. E. & C. SUIT NO.01 OF 2018

1. Shri. Nirvair Singh Chadha

2. Ajit Jogindersingh Chadha

..... Plaintiffs

versus

Amritlal Ladha Maru

..... Defendant

M/s. Corpslegal : Advocate for the plaintiffs

Mrs. Regina W. Correia : Advocate for the defendant

Coram : S. J. Gaikwad

Judge, C.R. No. 35 (B.B.)

Date : 14th June, 2018

ORAL ORDER :

From the contentions of the application and say filed by the plaintiffs, following points arises for my determination and I have recorded my findings thereon for the reasons stated as under :-

SR. NOS.	POINTS	FINDINGS
1	Whether the defendant has made out sufficient cause for condoning the delay ?	-Yes
2	Whether the application filed by the defendant for condonation of delay at Exhibit-9 is liable to allowed ?	-Yes
3	What order ?	-As per final order

:: R E A S O N S ::

As to Point Nos. 1 and 2 :

2. Read application supported by affidavit. Perused say filed by the plaintiffs. Perused record. Heard.

3. The advocate for the defendant has submitted that, the plaintiffs have filed this suit for eviction of the defendant from the suit premises alongwith other reliefs. The writ of summons has been served upon the defendant on 31.01.2018. The defendant has to file the written statement within 30 days from 31.01.2018 i.e. on or before 03.03.2018, but the defendant could not prepare and tender the written statement on 03.03.2018, as the defendant is 76 years of age and was continuously running from pillar to post to either to defend or prosecute the proceedings only to protect the only source of income and place for residence. There is 23 days delay for filing the written statement. The said

delay has been occurred due to on-going multiple court proceedings and owing to the old age of the defendant. The said delay is not deliberate and intentional. If the delay condoned and the defendant permitted to file the written statement, no right of plaintiffs will be prejudiced. Hence, prayed that, this application may be allowed and delay may be condoned.

4. On the other hand, the advocate for the plaintiffs has raised objection to this application by filing say contending that, the defendant purposely awaiting the outcome of the Hon'ble High Court in Writ Petition filed by him and therefore, the delayed the reply.

5. After considering the submissions made on behalf of both the sides and going through record, it seems that, according to defendant, he has been served with the writ of summons on 31.01.2018 and the defendant has to file his written statement upto 03.03.2018. However, according to the defendant, there is delay of 23 days. The reason has been mentioned as the defendant is 76 years old and the plaintiffs have initiated multiple court proceedings against the defendant. The said fact has not been denied by the plaintiffs. In such circumstances, I am of the view that, the reason mentioned by the defendant for causing delay seems to be genuine and reasonable one. In such circumstances, if by imposing some sort of cost upon the defendant, the delay as prayed is condoned, no right of plaintiffs will be prejudiced. On the contrary, it will be helpful to decide the matter on merits. So, this application deserves to be allowed. Hence, I answer point No. 1 and 2 in the affirmative and in the result, in answer to Point No. 3, I pass the following order :-

:: O R D E R ::

1. Application filed by defendant at Exhibit-9 is allowed.
2. Delay of 23 days for filing written statement has been condoned subject to cost of Rs.300/- (Rs. Three Hundred only) to be paid by defendant to plaintiffs on or before next date.
3. On payment of amount of cost, the written statement be taken on record.
4. Costs in cause.

(Dictated and pronounced in open court.)

Mumbai

Date : 14.06.2018

(S. J. Gaikwad)

Judge, C.R.No. 35(B.B.)

Order dictated on : 14.06.2018

Order transcribed on : 18.06.2018

Order checked on : 19.06.2018

Order signed on : 20.06.2018

(S. J. Gaikwad)

Judge, C.R.No. 35(B.B.)