

19.11.2022 CORAM-H.H.J. SHRI. A. Z. KHAN (C.R.NO.09) MA 260/18 APP. Sachin Jadhav for state present. Applicant and adv absent. Respondent and Adv absent. Order below Exh.1. Perused the application and the record. I have gone through the record. It is seen that the Ld. Trial court has passed the order in CC No.2475/SS/2017 on 13.09.2017 and the present application is filed on 24.08.2018 which is of 234 days delay. No doubt, the delay is inordinate but the opportunity of being heard to the parties concern should have to be given. Hence, the application is hereby allowed and the delay is hereby condoned but subject to payment of Cost of Rs.2,000/- to the Respondent No.1 or to be deposited with this court within 15 days. The Sessions Registrar is hereby directed to register the appeal/revision after due verification. The MA 260/18 is hereby disposed off accordingly.

SU- 1593/16 NOB TOB (Matter already disposed of in National Lokadalat dated 14.07.2018.) Mr. Varun Kakaria- Auth. Representative of plaintiff present. None present for deft. KB, Later on Mr. Varun Kakaria-Auth Representative of plaintiff present. Adv. V. R. Surve for plaintiff present. None present for deft. The suit is sought to be withdrawn, vide the Exh.8. The suit is disposed of, as withdrawn. In view of the withdrawal of the suit the Ch/sum No.828/18 and notice of motion if any, disp. of, being infructuous.

SU- 1591/16 NOB TOB (Matter already disposed of in National Lokadalat dated 14.07.2018.) Mr. Varun Kakaria- Auth. Representative of plaintiff present. None present for deft. KB, Later on Mr. Varun Kakaria-Auth Representative of plaintiff present. Adv. V. R. Surve for plaintiff present. None present for deft. The suit is sought to be withdrawn, vide the Exh.11. The suit is disposed of, as withdrawn. In view of the withdrawal of the suit the N/m No.2061/17 and Ch/sum No.826/18 disp.of, being infructuous.

SU- 1592/16 NOB TOB (Matter already disposed of in National Lokadalat dated 14.07.2018.) Mr. Varun Kakaria- Auth. Representative of plaintiff present. None present for deft. KB, Later on Mr. Varun Kakaria-Auth Representative of plaintiff present. Adv. V. R. Surve for plaintiff present. None present for deft. The suit is sought to be withdrawn, vide the Exh.8. The suit is disposed of, as withdrawn. In view of the withdrawal of the suit the N/m No.2060/17 and Ch/sum No.827/18 disp.of, being infructuous.

**BOMBAY CITY CIVIL COURT, BORIVALI DIVISION AT
DINDOSHI,GOREGAON, MUMBAI**

**NOTICE OF MOTION NO.2657 OF 2018
(CNR NO.MHCC04-006837-2018)
IN
S.C. SUIT NO. 2277 OF 2018**

Mr. Anand S/o. Nagarmal Agrawal

...Plaintiff

Vs.

**M/s. Supreme Transport Organisation
Private Limited & Ors.**

...Defendants

**CORAM: H.H.AD-HOC JUDGE SHRI M.H.SHAIKH
(C.R.NO.6)**

DATE : 29th August 2018

Adv. R.K.Singh i/b RKS Associates for plaintiff.
Adv. V.R.Surve for defendants no.1 to 6
Adv. Ranjana Sinha for defendants no.7 and 8.
Adv. Siddharth Rajmohan for defendant no.11.

AD-INTERIM ORDER

1. This is a notice of motion taken out by plaintiff with a prayer that pending the hearing and final disposal of the present suit, defendant no.1 to 6 their agents, servants or anybody claiming through them be temporarily restrained from in any manner routing/diverting and or depositing the amounts receivable from the defendant nos.10, 11 and other debtors of the defendant no.1 in any other bank account bearing no.02072980000064 provided by defendant nos.1 to 9. An affidavit in support of the notice of motion is filed.

2. The suit is for declaration that the email dated 19/04/2018 annexed to the plaint as Exh.'E' which is communicated by defendant no.1 to its debtors be declared as illegal, bad-in-law and for consequential relief of

injunction.

3. In response to the notice served by the plaintiff upon the defendants, advocate for defendant no.1 to 8 and 11 appeared through their advocates. An Officer of defendant no.9 bank appeared in person. Defendant no.10 though served failed to appear.

4. Heard learned advocate for the plaintiff. He carried the Court to the averments of the plaint and the documents annexed to the plaint. He submitted that there is an agreement by defendant no.1 with defendant no.9 that the defendant and defendant no.9 had executed a sanction letter and the amount which will be receivable by the defendant no.1 from its debtors shall go in the account of defendant no.1 which is maintained with the defendant no.9 bank. He submitted that there is a contract in such a fashion and defendant no.1 has breached the said contract. Defendant nos.2 to 6 are actually in control of defendant no.1 company and they had issued the said email which is bad-in-law to the debtors. He submitted that therefore it is necessary that the defendant no.1 to 6 be directed to adhere to the agreement and the sanction letter in which they are the party alongwith other defendants and the plaintiff himself. Therefore he prayed for ad-interim relief in terms of prayer clause (a) of the notice of motion.

5. Learned advocate for defendant nos.1 to 6 filed a short reply to the notice of motion and also filed certain documents in support of his defence. By way of reply, the defendant nos.1 to 6 denied the contents of an affidavit in support of the notice of motion, so also the contents of the suit. A company petition was taken out by the plaintiff and similar type of prayer was sought. It is further case that three flats which are mentioned in para 11 are mortgaged with defendant no.9 bank and the defendant no.9 bank had

initiated a proceeding under a SARFAESI Act. Therefore as per the reply, a suit is barred by the principle of res-judicata. The other debtors are not joined as a party to the proceedings. Therefore the suit is bad for mis-joinder of parties and in this way defendant nos.1 to 6 tried to justify an email under challenge and therefore prayed for rejection of ad-interim prayer.

6. Learned advocate for defendant nos.1 to 6 argued in the same line as per his reply which is filed to the notice of motion. He invited the attention of the Court to the document which he has relied upon and pointed out that similar prayer was sought in the company petition. He further submitted that other debtors are not made party to the proceeding. So also if the ad-interim relief is granted it will amount to grant of final relief and in such scenario he submitted that ad-interim relief be refused.

7. Learned advocate for defendant nos.7 and 8 supported the plaintiff for grant of ad-interim relief.

8. An Officer of defendant no.9 submitted that no relief is claimed as against them. Further he submitted that there is an agreement and sanction letter and they should adhere to the same and an amount which are receivable by defendant no.1 company should be deposited with the defendant no.9 as per the terms of the contract. Infact he submitted that they have initiated legal proceedings and they are having an order of the Court with them and therefore he submitted to the orders of the Court.

9. The learned advocate for defendant no.11 submitted that he is submitting to the orders of the Court and will abide by the orders which will be passed by this Court.

10. Upon hearing and going through the material placed on record, what can be gathered is that there is an agreement between defendant no.1. and defendant no.9 bank. It is agreed that there shall be one account with the defendant no.9 bank and all the receivables from the debtors of defendant no.1 shall be deposited with the bank i.e. defendant no.9. Now if we perused an email which is under challenge at page no.98 of the plaint at Exh.'E', one will find that the defendant no.1 had addressed the said email to all its debtors stating therein that payments to be made to the HDFC Bank Ltd. And the details of the branch, account no. IFSC code and MICR are mentioned in the said email. Further it is mentioned in the email that the letter issued to defendant no.9 bank is illegal and that they are seeking legal measures against defendant no.9 bank. In the said letter, it is also mentioned that if the payments are made other than to HDFC Bank, said payments will not be considered as payments received by the defendant no.1 company. So what can be gathered from the email is that the defendant no.1 is diverting itself from an agreement which they had agreed. An agreement says that they will deposit an entire receivable from the debtors in the bank account of defendant no.9 and not with any other bank. Therefore prima facie it is seen that the defendant no.1 had diverted itself from the contract and had breach the contract. The learned advocate for defendant nos.1 to 6 tried to justify the stand by arguing that certain immovable properties are mortgaged with the defendant no.9 bank and they have proceeded against those immovable properties which were mortgaged with the bank and they had also initiated an action under the SARFAESI Act. Therefore it was his argument that bank can easily recover an amount and it is required for the defendant no.1 company to fulfill the salary and other expenses of the employees of defendant no.1 company. However the fact is that defendant no.1 company had diverted itself from an agreement and contract of depositing the entire receivables with the defendant no.9 bank. Defendant nos.1 to 6 did not justify the Court as regard

this. Therefore prima facie the plaintiff has made out case that the defendant nos.1 to 6 had breach the terms of contract about depositing receivables from the debtors of defendant no.1 with the defendant no.9 bank. Balance of convenience is concerned, it certainly tilts in favour of the plaintiff. If Defendant no.9 bank initiate action there will be multiplicity of litigation. On the other hand, if the defendant nos. 1 to 6 follow the contract then no irreparable loss will cause to the plaintiff. Therefore this Court finds that at this juncture, plaintiff has made out his case for grant of ad-interim relief. Therefore this Court proceeds to pass the following order.

ORDER

Ad-interim relief in terms of prayer clause (a) is granted but as regard debtors i.e. defendant nos.10 and 11 only.

(M.H.Shaikh)

Ad-hoc Judge, City Civil Court,
Borivali Div. Dindoshi, Mumbai.

Dictated on : 29/08/2018
Transcribed on : 30/08/2018
Signed on : 31/08/2018

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER”

Date : 31/08/2018

Time : 5.00 P.M.

UPLOAD DATE AND TIME

Mrs. Manisha S. Putta

(H.G.Stenographer)

NAME OF STENOGRAPHER

Name of the Judge (with Court room no.)	HHJ Shri M.H.Shaikh (C.R.No.6)
Date of Pronouncement of JUDGMENT/ORDER	29/08/2018
JUDGMENT/ORDER signed by P.O. on	31/08/2018
JUDGEMENT/ORDER uploaded on	31/08/2018

CNR NO.MHCC04-009174-2017

**IN THE BOMBAY CITY CIVIL COURT AT BOMBAY
BORIVALI DIVISION, DINDOSHI (BRANCH)
CHAMBER SUMMONS NO.655 OF 2018
IN
SUMMARY SUIT NO.817 of 2017**

Mr.Deepak S/o. Satish Agarwal ...Plaintiff

V/s.

Mr.Ammet S/o. Kamal Agarwal ...Defendant

**Advocate Anand Kandoi for Plaintiff.
Advocate Vivek Surve for Defendant.**

**CORAM: His Hounour Ad-hoc Judge
Shri Vilas P.Kadam
(C.R.No.5)
DATE : 07th August, 2018**

:ORAL ORDER:

1. The defendant has taken out the present Chamber Summons for condonation of delay for filing appearance and memorandum of address. Detailed affidavit is submitted that due to reason mentioned in affidavit the Chamber Summons be allowed and permit the defendant to file his appearance.
2. The plaintiff has filed reply to the Chamber Summons and taken various grounds for rejecting the same.
3. While arguing the matter, learned Advocate for defendant submitted that the matter be decided on merits and permit the defendant to file leave to defend. Learned Advocate for plaintiff opposed the same and prayed for passing suitable order on merits.

4. After hearing both the parties, I think that the delay definitely is there as per the contention of the defendant i.e. delay of 123 days and as per the contention of Advocate for plaintiff there is delay of 162 days.

5. Definitely present suit is summary suit. The defendant turned by taking out such Chamber Summons for permitting him to file appearance and leave to defend. As per report below Ex.5, the writ of summons is duly served on defendant on 13.11.2017. Thus, I think there is considerable delay.

6. In order to avoid multiplicity of proceedings and to decide the matter on merits, I think delay is required to be condoned subject to payment of cost. If delay is condoned, no harm will be caused to the plaintiff as he will get sufficient opportunity for proving his case. At the same time defendant would get the opportunity for filing leave to defend if any. Thus, matter would be decided on merits and therefore needs to condone the delay, subject to payment of cost. Hence, I proceed to pass the following order:-

ORDER

- 1) Chamber Summons No.655/2018 is hereby allowed, subject to payment of cost of Rs.6,000/- to the plaintiff.
- 2) 7 days time is granted for depositing the cost.

07/08/2018

(Vilas P. Kadam)
Ad-Hoc Judge,
City Civil Court &
Asstt.Sessions Judge
Dindoshi, Mumbai.

Date of dictation : 07/08/2018

Date of transcription by steno: 08/08/2018

Date of order signed by HHJ : 08/08/2018

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER.”

08/08/2018

UPLOAD DATE AND TIME

MR.S.M.BANDEKAR

(S.G.STENOGRAPHER)

NAME OF STENOGRAPHER

Name of the Judge (With Court Room No.)	H.H.J.Shri Vilas P. Kadam Court Room No.5
Date of pronouncement of Judgment/Order	07/08/2018
Judgment/Order signed by P.O. on	08/08/2018
Judgment/Order uploaded on	08/08/2018

Daily Status

IN THE COURT OF :Ad-hoc Judge, City Civil Court and Asst. Sessions Judge

Case No. :Chamber Summons/0200655/2018

Deepak Satish Agarwal Vs Ammeet kamal Agarwal

Date : 07-08-2018

Business : SUM-817/17 Adv.Anand Kandoi for plaintiff present.
Adv.V.R.Surve for defendant present. Registered Ch/s.
No.655/18@ affidavit in support tendered by Adv. for deft.
Reply is already filed. Heard both sides on Ch/s.No.655/18.
FRSR Following order is passed - ORDER 1)Chamber
Summons No.655/2018 is hereby allowed, subject to
payment of cost of Rs.6,000/- to the plaintiff. 2) 7 days time
is granted for depositing the cost.

Nature of Disposal : ALLOWED

Disposal Date : 07-08-2018

Ad-hoc Judge, City Civil Court and Asst. Sessions Judge