
(2007) 11 DEL CK 0063

In the Delhi High Court

Case No : Civil Suit (Original Side) No. 783 of 2006

Info Edge (India) Ltd. and Others

APPELLANT

Vs

Mr. Sanjeev Goyal

RESPONDENT

Date of Decision : 16-11-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 2A, Order 39 Rule 4, Order 5 Rule 1, Order 5 Rule 9, Order 7 Rule 1
Evidence Act, 1872 — Section 65(B)

Citation : (2007) 10 AD 461

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Advocate : U. Hazarika and Sudeep Chatterjee, for the Appellant; A.K. Singh, Vimal Dubey and Dhirty Phookan, for the Respondent

Final Decision : Allowed

Judgement

Anil Kumar, J.

IA No. 6066 of 2007

1. This is an application by the defendant seeking condensation of delay in filing the written statement alleging that there are exceptional circumstances in the facts and circumstances for condensation of delay.
2. The defendant specifically contended that he had not been served properly by the plaintiff till the date of filing of the written statement. It is contended that the plaintiff had been sending emails to him without serving him with the entire paper book of the suit.
3. The defendant/applicant asserted that he is the Registrar with NIXI and he came in contact with Mr. Rishi Chawla, Advocate, who informed him that he has been working in the High Court of Delhi with Mr. C.V. Francis, Advocate, and he with his senior will be able to look after the matter properly. A vakalatnama of Mr. C.V. Francis was sent by Mr. Rishi Chawla, Advocate, for signing and then

sending it back to Mr. C.V. Francis which was done by the defendant. The applicant further asserted that Mr. Rishi Chawla, Advocate, was paid Rs. 25,000/- by the defendant for contesting the suit on his behalf and for making the payment to Mr. C.V. Francis, Advocate, which amount was withdrawn by the defendant/applicant from an ICICI Bank's ATM at Connaught Place, Delhi. Mr. Rishi Chawla, Advocate had assured the applicant that Mr. C.V. Francis, Advocate, shall look after the matter and will intimate him as to whatsoever is to be done. The defendant/applicant had also sent some relevant documents to the said advocate through courier. Since the documents had been received by Mr. C.V. Francis, Advocate, and since nothing was demanded from him, the defendant remained under the bonafide impression that everything is being taken care of in the suit, as defendant was not aware of the legalities involved. The applicant categorically contended that at no point of time he was called upon to appear in the court or to take any further steps though he had been in continuous touch with Mr. Rishi Chawla, Advocate. It is contended by the defendant that he had been visiting Delhi regularly on account of his professional activities and had been meeting Mr. Rishi Chawla, Advocate, in this regard who always represented that the counsel is appearing on his behalf as a power of attorney had already been signed by the defendant and sent to him.

4. The applicant has contended that he received the letter dated 24th February, 2007 from Francis and George, Advocates and Consultants, of Mr. C.V. Francis, Advocate, asking him to make suitable arrangement for defending the applications before the court since he was not in the picture and not able to defend the defendant. This letter completely surprised the defendant because he was under the bona fide impression that since he has paid the fees and sent the document, the case is being contested on his behalf. The said counsel had also written a letter dated 16th February, 2007 to the counsel for the plaintiff stipulating that he is not a counsel for Mr. Sanjiv Goel, defendant/applicant although a colleague of Mr. C.V. Francis had appeared in the court on account of telephonic information. In his letter to the counsel for the plaintiff, it was also stated that he has not received any vakalatnama nor he has been instructed by the applicant to represent before the court and he is helpless to deal with the situation and, Therefore, the plaintiff was asked to deal directly with the defendant since the counsel, Mr. C.V. Francis alleged that he was not in the picture. The said counsel, however, never intimated the defendant that he had not received the vakalatnama signed and sent by the defendant and that he has not been instructed and paid fees by Rishi Chawla advocate.

5. The applicant contended that on receipt of such a letter from Mr. C.V. Francis, Advocate, he tried to contact Mr. Rishi Chawla a number of times but could not contact him for considerable time as his mobile number was either out of reach or switched off and, Therefore, the defendant came personally to Delhi and contacted Mr. Rishi Chawla, Advocate, who after persistence enquiry by the applicant brought a file consisting of few documents placed haphazardly and delivered it to him against a receipt about the receipt of case file by the

applicant. The said counsel, Mr. Rishi Chawla, Advocate, also refused to return the money which was paid by the defendant to him and any other information about the progress of case and as to what was done on his behalf in the case. The applicant also contended that in the meantime a police man approached his place at Mumbai with bailable warrants issued by this Court. Therefore, another counsel was engaged by the applicant who inspected the file when it transpired that no steps were taken by the counsel who appeared on behalf of the applicant nor filed the power of attorney or any memorandum of appearance nor the written statement on behalf of the applicant. Therefore, the new counsel immediately prepared the written statement and filed the same along with the present application for condensation of delay dated 15th May, 2007. The defendant/applicant has also filed the application for vacation of the stay under Order XXXIX Rule 4 read with Section 151 of the CPC after stopping his web site as an interim injunction order was passed against him which was not communicated to him earlier.

6. The applicant has also filed a number of documents showing that the website of the plaintiff "Naukri.com" in the list of job sites has also included the website of the applicant "Noukri.com". A copy of this document was taken from the Internet by the defendant on 15th June, 2006 showing that the plaintiff's website had relied on the URL address of the defendant till that date. The applicant also relied on the appraisal of domain names reflecting that a combined domain name appraisal value secured by plaintiff was 442 and the estimated domain name value of the plaintiff was \$ 170,612.00 in contradiction to the domain name appraisal value of 2056 of the defendant with estimated domain name value of \$ 680,536. The applicant, Therefore, contended that the suit has been filed merely with a view to usurp the goodwill and the reputation of the defendant and there was no reason for the defendant not to contest the suit or delay the suit as later on it transpired that an ex parte order had been obtained by the plaintiff by misstating the facts. The defendant stated that he has closed his website on account of interim order passed by the Court and is suffering substantially. The applicant/defendant also contended that the written statement could not be filed as he was not aware that it had to be filed within 30 days nor the counsel had informed him about the same and he has been misled by the counsel to whom consideration demanded by him was paid. Despite the fact that the counsel engaged by the defendant, Mr. Rishi Chawla, Advocate, was paid the fees and the vakalatnama was sent to Mr. Francis Advocate though he alleged that he has not been paid any consideration and that he had not received the vakalatnama and only on account of telephonic information to him, one of his colleagues had appeared in the case. The applicant contended that he bona fide believed that the counsel will look after his interest and will advise him as to what is to be done. He had entrusted some of the relevant papers and had also paid the fees and had also sent the vakalatnama. The applicant contended that in these circumstances, the loss which will be caused to the applicant shall be immense which cannot be compensated in terms of money, in case his right to

file the written statement is closed compared to the loss to the plaintiff, as he already has an ex parte order because of which the defendant business has come to a knot and the delay, if any, in filing the written statement can be compensated by awarding cost to the plaintiff.

7. The application is contested by the plaintiff alleging inter alias that the written statement has been filed one year after the institution of the present suit and consequently it is beyond the period of 30 days and 90 days as contemplated under the Code of Civil Procedure. The plaintiff/non-applicant also contended that the summons were served by courier and an affidavit of the clerk of the plaintiff counsel was filed on 10th October, 2006 along with courier receipt and report from the site of the courier intimating that the article had been delivered to the defendant on 8th September, 2006.

8. It is further contended that the Joint Registrar on 11th October, 2006 had recorded that the service had been effected upon the defendant and placed the matter before the court on 18th December, 2006 on which date Mr. C.V. Francis, Advocate, appeared for the defendant and sought time to file the written statement and he was given time to file the written statement within the time prescribed by the law.

9. The plaintiff also contended that the pending applications is Nos. 1784 and 1785/2007 were filed under Order 39 Rule 2A for continued breach of injunction order for transfer of the domain name and the Court issued notice for 1st March, 2007 directing the presence of defendant in person. On 1st March, 2007 since the defendant did not appear, as the counsel, Mr. C.V. Francis, stated that he has not received any instructions and sought his discharge, Therefore, the bailable warrants were issued against the defendant for 16th May, 2007. On 16th May, 2007, defendant appeared through a counsel and the bailable warrants were discharged. According to the plaintiff, the defendant has willfully disobeyed the order of injunction passed on 8th May, 2006 and he stopped operating his website on 11th May, 2007 though he was served on 8th September, 2006 and consequently the conduct of the defendant disentitles him for any condensation of delay as there are no bonafide reasons. The plaintiff also contended that the allegations by the defendant against his erstwhile counsel are false, as it is evident from the order dated 1st March, 2007 where the learned Counsel made a statement that he had not received any instructions and Therefore, he had sought a discharge. The plaintiff has also contended that defendant himself was sending emails to the plaintiff admitting that he had come to know about the suit, which clearly discloses that the defendant was clearly posted about the present matter and proceedings and, Therefore, the defendant cannot blame his lawyer and there are no grounds for condensation of delay in filing the written statement.

10. The written statement has since been filed by the defendant on 15th May, 2007. For the defendant to file a written statement within time contemplated under Order VIII Rule 1 of the Code of Civil Procedure, it is not only the

knowledge of the pendency of the suit which is material but also the fact that the entire copy of the paper book has also been supplied to the defendant and received by him. The plaintiff contesting the application for condensation of delay in filing the written statement must disclose that the copy of the plaint and the documents had been served on the defendant and despite that the written statement has not been filed. In the present case, the plaintiff has relied on a copy of the e-mail dated 14th June, 2006, the print for which was taken on 1st October, 2007. It is alleged that a copy of the interim order passed against the defendant was sent along with the e-mail as an attachment. However, the same has not been filed in compliance with Section 65(B) of the Indian Evidence Act, 1872. Section 65(B) of the Indian Evidence Act, 1872 is as under:

Section 65(B). Admissibility Of Electronic Records-

(1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in the Sub-section (1) in respect to the computer output shall be following, namely:

(a) the computer output containing the information was produced by computer during the period over which computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of computer.

(b) during the said period the information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities.

(c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation for that part of the period, was not such to affect the electronic record or the accuracy of its contents.

(d) The information contained in the electronic record reproduces or is derived from such information fed into computer in ordinary course of said activities.

(3) Where over any period, the function of storing and processing information for the purposes of any activities regularly carried on over that period as mentioned in Clause (a) of Sub-section (2) was regularly performed by the computers, whether-

(a) by a combination of computer operating over that period, or

- (b) by different computers operating in succession over that period; or
- (c) by different combinations of computers operating in succession over that period of time; or
- (d) in any other manner involving successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers,

all the computers used for that purpose during that period shall be treated for the purpose of this section as Constituting a single computer and any reference in the section to a computer shall be construed accordingly.

(4) In any proceeding where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say, -

- a) identifying the electronic record containing the statement and describing the manner in which it was produced;
- b) giving such particulars of such device involved in the production of electronic record as maybe appropriate for the purpose of showing that the electronic record was produced by a computer.
- c) Dealing with any of the matters to which the conditions mentioned in Sub-section (2) relates,

and purporting to be signed by the person occupying a responsible official position in relation to the operation of the relevant device or management of relevant activities (whichever is appropriate) shall be evidence of any matters stated in the certificate; and for the purpose of this section it shall be sufficient for a matter to be stated to best of knowledge or best of belief of the person stating it.

(5) For the purpose of this section,-

- (a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly (with or without human intervention) by means of any appropriate equipment.
- (b) whether in course of activities carried on by any official information is supplied with a view to its being stored or processed for the purpose of those activities by a computer operated otherwise than in course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to the computer in course of those activities.
- (c) a computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

Explanation - For the purpose of this section any references to information being

derived from another information shall be a reference to it's being derived there from by calculation, comparison or any other process.

11. Though it is alleged that a copy of the interim order dated 8th May, 2006 was scanned and was attached with the e-mail, however, from the copy of the e-mail it is not apparent as to what was sent along with alleged e-mail. No report or affidavit has been filed fulfilling the condition contemplated u/s 65(B) of the Indian Evidence Act, 1872 to show that e-mail was sent to the defendant and was received by him along with any attachment. On the basis of alleged e-mail, it could not be expected that the defendant could file the written statement refuting the pleas and contentions raised by the plaintiff and refuting or admitting the documents relied on by the plaintiff.

12. The plaintiff has also contended that the summons of the suit were served on the defendant by courier and a copy of courier receipt along with the affidavit of Mr. Kamal Mehra, clerk of the counsel for the plaintiff has been filed. From the index of the plaint, it appears that there are 63 pages in the plaint which include list of documents, list of reliance, applications and vakalatnama and the documents which have been filed by the plaintiff along with the suit also run into about 188 pages out of which documents which are on pages from 183 to 188 are the folders of thick paper and quite heavy. From the courier receipt, it appears that the weight of the paper book which was sent was only 1.500 kg. There is no acknowledgment receipt that the articles sent by courier were served and received by the defendant except the alleged copy of status report of courier article taken by the plaintiff from the Internet which is again not in compliance with Section 65(B) of the Indian Evidence Act, 1872 nor it is in compliance with Order V Rule 9 of the Code of Civil Procedure. In the circumstances, there is nothing to show that defendant was served with the copy of the plaint, applications and copies of the documents relied on by the plaintiff which was filed along with the plaint. In the circumstances, this cannot be accepted to be a valid service on the defendant so as to make him liable to file the written statement within thirty days from the alleged date of service.

13. Mr. C.V. Francis, learned Counsel, appeared on behalf of defendant on 18th December, 2006 and sought time to file the written statement. However, neither the vakalatnama of Mr. C.V. Francis is on record nor any memo of appearance has been filed by the said counsel appearing on behalf of defendant. The counsel had alleged in his letter to the counsel for the plaintiff and in the letter to the defendant that he had appeared in the case on account of telephonic instructions and he had no other knowledge about the matter. From the order dated 18th December, 2006 it does not appear that a complete set of paper book was given to the said counsel in the Court. The case of the defendant is that he had engaged Mr. Rishi Chawla, Advocate, who was also associated with NIXI where the defendant is a Registrar. It has also been contended specifically that Mr. Rishi Chawla, Advocate, was paid Rs. 25,000/- which fact cannot be doubted in the present facts and circumstances. The defendant has categorically contended that

he has not been served properly till the time of filing the written statement. According to the defendant, he had sent all relevant documents to Mr. C.V. Francis, through courier, however, Mr. C.V. Francis, Advocate, had stated in a letter written to the counsel for the plaintiff that the vakalatnama has not been received by him. Without the vakalatnama or memo of appearance filed by the counsel who appeared only on account of telephonic instruction given to him by another counsel, he could not seek time to file the written statement on behalf of the defendant nor it will be appropriate to compute the time from the date when Mr. Francis sought time to file written statement in the present facts and circumstances of the case. Mr. Francis did not know whether the defendant has been served with the complete paper book or not. The case is very peculiar because Mr. C.V. Francis was not engaged by the defendant but he was entrusted brief by Mr. Rishi Chawla, Advocate, telephonically and it seems Mr. Rishi Chawla also did not pay any fees to Mr. Francis though he had received the fees from the defendant. Mr. C.V. Francis communication stipulates that he appeared in the court on account of the telephonic message received by him perhaps from Mr. Rishi Chawla, Advocate, without any further authorization. He has categorically contended that he is not the counsel for the defendant. The said counsel had also intimated the defendant by letter dated 24th February, 2007 that he is not his counsel as he had appeared on account of telephonic instructions from Mr. Rishi Chawla and defendant should make suitable arrangement for defending the suit as he is not in the picture. On receiving this communication from Mr. C.V. Francis, Advocate, who appeared without proper authorization on behalf of defendant and sought time to file the written statement without knowing whether the defendant has been served with a copy of full paper book. The plaintiff thereafter, engaged Mr. A.K. Singh, Advocate who filed the written statement dated 15th May, 2007. If the time is computed after 24th February, 2007 when the intimation was sent by Mr. C.V. Francis, Advocate, to the applicant/defendant that he is not representing him and is not his counsel, then written statement has been filed within 90 days and there is sufficient cause for condensation of delay in filing the written statement.

14. The learned Counsel for the plaintiff has also emphasized on an application for rectification filed by the defendant before the Intellectual Property Office in June 2006 stipulating about the case filed by the plaintiff against the defendant. I think, in the present facts and circumstances, mere knowledge of the filing of the case will not be sufficient nor will impute the liability on the defendant to file the written statement within 30 days of such knowledge, unless the copies of the plaint, applications and documents were served on the defendant. Merely on the basis of the knowledge of the pendency of the case, it is not expected from the defendant to comprehend the allegations made against him and the documents which have been filed and to file a written statement within 30 days of such knowledge. Even on this ground, the plaintiff cannot succeed and contend that the right of the defendant to file the written statement be closed as he did not file the written statement within 30 days of such knowledge.

15. In any case, considering various other pleas, on the merit of the case, where the defendant has shown that his domain name appraisal value was much more than the plaintiff and the other factors, it appears that the defendant would not have gained anything from delaying the suit as an interim order had already been passed against him. Whether the defendant has violated the interim order or not, is to be decided separately, as an application for alleged violation of the interim order is pending and in the present application, in the present facts and circumstances, on the ground of alleged violation of the order, the right of the defendant to file the written statement should not be closed in the interest of justice.

16. The defendant has contended that he had not been served though he had knowledge of the pendency of the suit and only after the counsel Mr. C.V. Francis's letter that he will not represent him and he should employ a new counsel, Mr. A.K. Singh was appointed who probably inspected the file, got the documents and prepared the written statement within 90 days. In the circumstances, as the defendant was not properly served by courier or by any other mode, Therefore, it cannot be held that the period for counting the time will commence from 18th December, 2006 when Mr. C.V. Francis, Advocate who did not file his vakalatnama and who also did not file his memo of appearance on behalf of defendant, had sought time to file the written statement. Even if, it is presumed for some reason that the time should commence from 18th December, 2006, still, in the facts and circumstances, the defendant has been able to make out a case of exceptional circumstances for condensation of delay in filing the written statement. The plaintiff has already obtained an ex parte order pursuant to which the website of the defendant has been closed.

17. It is no more rest integra that in spite of the time limit contemplated by Rule 1 under Order VIII of the CPC having expired, the Court is not powerless to permit a written statement being filed, if the Court may require such written statement. The Court also need not necessarily pronounce judgment against the defendant who fails to file the written statement as required by Rule 1 or Rule 9 and may still make such other order in relation to the suit as it thinks fit. If the written statement is not filed within ninety days no penal consequences as such has been provided and relying on these features the Supreme Court in *Kailash Vs. Nanhku and Others*, had held:

28. All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the statute, the provisions of CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice. The observations made by Krishna Iyer, J. in *Sushil Kumar Sen v. State*

of Bihar 10 are pertinent: (SCC p. 777, paras 5-6)

The mortality of justice at the hands of law troubles a judge's conscience and points an angry interrogation at the law reformer.

The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in judges to act *ex debito justitiae* where the tragic sequel otherwise would be wholly inequitable. Justice is the goal of jurisprudence - processual, as much as substantive.

18. The Apex Court in *Nankhu* (supra) had thus held that the provision has to be construed as directory and not mandatory and in exceptional circumstances, the Court may extend the time for filing the written statement though the period of 30 days and 90 days as contemplated in the provision has expired. The extension can be only by way of an exception and for reasons assigned by the defendant and also recorded in writing by the Court to its satisfaction and if required in the interest of justice and if grave injustice would be occasioned if the time is not extended. This was also held that the Court may extend time by imposing costs for dual purpose: (i) to deter the defendant from seeking any extension of time just for asking and (ii) to compensate the plaintiff for the delay and inconvenience caused to him. A two Judges Bench of the Apex Court in *Smt. Rani Kusum Vs. Smt. Kanchan Devi and Others*, had relied on the ratio of three Judges bench in *Nanhko* (supra) and had held that Order 8 Rule 1 of CPC is a part of procedural law and hence directory, keeping in view the need for expeditious trial of civil causes which persuaded Parliament to enact the provision in its present form. It was held that ordinarily the time schedule contained in the provision is to be followed as a rule and departure there from would be by way of exception. A prayer for extension of time made by the defendant is not to be granted just as a matter of routine and merely for the asking, more so when the period of 90 days has expired. Extension of time may be allowed by way of an exception, for reasons to be assigned by the defendant and also be placed on record in writing, howsoever briefly, by the court on its being satisfied. Extension of time may be allowed, if it is needed to be given for circumstances which are exceptional, occasioned by reasons beyond the control of the defendant and grave injustice would be occasioned if the time is not extended. Costs may be imposed and affidavit or documents in support of the grounds pleaded by the defendant for extension of time may be demanded, depending on the facts and circumstances of a given case. This ratio was again reiterated by another bench of two Hon'ble Judges of Supreme Court in *Mr. Shaikh Salim Haji Abdul Khayumsab Vs. Mr. Kumar and Others*, relying on *Nanhku* (supra) and *Rani Kusum* (supra) holding that the Extension of time can be allowed, if it is needed to be given for circumstances which are exceptional, occasioned by reasons beyond the control of the defendant and grave injustice would be occasioned, if the time is not extended and for this costs may be

imposed and affidavit or documents in support of the grounds pleaded by the defendant for extension of time may be demanded, depending on the facts and circumstances of a given case. It was held as under:

19. Learned Counsel for the respondent submitted that the court could not have granted time beyond 90 days. This plea is untenable in view of what has been stated in Kailash case and Rani Kusum case. Additionally a party cannot be made to suffer if the court has committed a mistake, if for the sake of argument it is held that the court had mistakenly granted time.

19. This also cannot be disputed that in certain circumstances, a party cannot be allowed to suffer for misdemeanor or inaction of his counsel. Reliance can be placed on Rafiq and Another Vs. Munshilal and Another, where at page 790 the Apex Court had held as under:

3. ...After engaging a lawyer, the party may remain supremely confident that the lawyer will look after his interest. At the time of the hearing of the appeal, the personal appearance of the party is not only not required but hardly useful. Therefore, the party having done everything in his power to effectively participate in the proceedings can rest assured that he has neither to go to the High Court to inquire as to what is happening in the High Court with regard to his appeal nor is he to act as a watchdog of the advocate that the latter appears in the matter when it is listed. It is no part of his job. Mr. A.K. Sanghi stated that a practice has grown up in the High Court of Allahabad amongst the lawyers that they remain absent when they do not like a particular Bench. Maybe, we do not know, he is better informed in this matter. Ignorance in this behalf is our bliss. Even if we do not put our seal of imprimatur on the alleged practice by dismissing this matter which may discourage such a tendency, would it not bring justice delivery system into disrepute. What is the fault of the party who having done everything in his power expected of him would suffer because of the default of his advocate. If we reject this appeal, as Mr. A.K. Sanghi invited us to do, the only one who would suffer would not be the lawyer who did not appear but the party whose interest he represented. The problem that agitates us is whether it is proper that the party should suffer for the inaction, deliberate omission, or misdemeanour of his agent. The answer obviously is in the negative. Maybe that the learned Advocate absented himself deliberately or intentionally. We have no material for ascertaining that aspect of the matter. We say nothing more on that aspect of the matter. However, we cannot be a party to an innocent party suffering injustice merely because his chosen advocate defaulted. Therefore, we allow this appeal, set aside the order of the High Court both dismissing the appeal and refusing to recall that order. We direct that the appeal be restored to its original number in the High Court and be disposed of according to law. If there is a stay of dispossession it will continue till the disposal of the matter by the High Court. There remains the question as to who shall pay the costs of the respondent here. As we feel that the party is not responsible because he has done whatever was possible and was in his power to do, the costs amounting to

Rs. 200 should be recovered from the advocate who absented himself. The right to execute that order is reserved with the party represented by Mr. A.K. Sanghi.

20. Default by a lawyer in not informing the dismissal of the writ petition to a Corporation which corporation after coming to know about the default, engaged another lawyer and removed the defaulting lawyer from the panel and filed an appeal seeking condensation of delay on account of default of the lawyer, was held to have sufficient cause for condensation of delay by the Supreme Court in *Municipal Corporation, Gwalior Vs. Ramcharan (D) by Lrs. and Others, , Municipal Corporation, Gwalior v. Ramcharan (D) by L.Rs.*, the Supreme Court had held that the counsel and the Revenue Officer, who filed their affidavits, did not have any personal interest in the matter and the learned advocate appearing for the Municipal Corporation was not going to gain anything either by remaining absent at the time of hearing of the first appeal or by assigning a false cause for his non-appearance at the time of hearing. It was held that since the valuable rights of the parties in an immovable property were involved and Therefore, on the totality of the facts and circumstances of the case, the High Court ought to have taken a liberal, and not a rigid and too technical a view of the issue before it, and should have condoned the delay in filing the appeal and concentrated on examining whether the appeal raised any substantial question of law worth being heard by the High Court and Therefore, had held that a sufficient cause for condoning the delay in filing the appeal before the High Court was made out on account of default of the lawyer. Regarding condensation of delay it was held that the expression `sufficient cause' is adequately elastic to enable the Courts to apply the law in meaningful manner to subserve the ends of justice and had enunciated the principles in *Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, .* for having a liberal approach as follows:

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.
2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.
3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.
4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.
5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

21. The learned Counsel for the plaintiff has relied on 130 (2000) DLT 629, HTIL Corporation, B.V and Ors. v. Ajay Kohli and Ors. to contend that the defendant is not entitled for condensation of delay in filing the written statement. Apparently the facts of the case relied on by the plaintiff are quite distinguishable and in those facts and circumstances, it was held that the defendant was not entitled for condensation of delay in filing the written statement as the defendant had failed to make out any good ground justifying delay in filing written statement despite time given by the court.

22. In case the delay in filing a written statement is not condoned in the facts and circumstances it will occasion injustice especially as the plaintiff already has an ex parte interim order pursuant to which the defendant has already stopped his web site. Extension of time is to be allowed in the present facts and circumstances which are exceptional and are occasioned by reasons beyond the control of the defendant. The Apex Court in Rafiq (supra) had held that a party cannot be allowed to suffer for misdemeanor or inaction of his counsel. The defendant has categorically contended that he had not been served with the summons of the suit and the applications and on the basis of his knowledge he had engaged the counsel Shri Rishi Chawla who further entrusted the brief to Shri C.V.Francis who however, took a plea that he was informed telephonically only and had no instructions in the brief and he asked the defendant to engage some other counsel.

23. Considering various other factors, it will be just and appropriate to impose cost on the defendant for the delay in filing the written statement to be paid to the plaintiff and condone the delay in filing the written statement.

24. For the reasons stated hereinabove, the application is allowed subject to cost of Rs. 10,000/- payable by the defendant to the plaintiff to be paid within four weeks and delay in filing the written statement by the defendant is condoned and the written statement is taken on record.

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Written statement is taken on record. Replication, if any, be filed within four weeks.

Parties are directed to file their original documents or certified copies thereof within 8 weeks.

List before the Joint Registrar for admission/denial and marking of documents on 25.1.2008.

List before the Court on 7.3.2008 for framing of issues.

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List for hearing on 7.3.2008.

Interim orders to continue.