

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
INTERIM APPLICATION NO. 7144 OF 2025
IN
COMMERCIAL SUIT NO. 92 OF 2025

Culver Max Entertainment Pvt. Ltd

...Applicant

In the Matter of:

Catch Media Inc.

...Plaintiff

Versus

Culver Max Entertainment Pvt. Ltd.

...Defendant

Mr. Achal Gupta a/w Mr. Aditya Joshi h/f Ms. Anubha Rastogi for the Plaintiff.

Mr. Hiren Kamod a/w Ms. Binsy Susan, Ms. Deeksha Pokhriyal, Ms. Shweta Sahu, Ms. Shreya Jain, Ms. Swagata Ghosh, Ms. Prachi Gupta i/b Shardul Amarchand Mangaldas for the Defendant.

CORAM : ARIF S. DOCTOR, J.

DATE : 11th SEPTEMBER 2026

P.C.

1. The Applicant, who is the Defendant in the captioned Suit has filed the present Interim Application seeking condonation of a delay of 50 days in filing the Written Statement. The Plaintiff, has filed an affidavit-in-reply

opposing the captioned Interim Application. The parties are hereinafter are referred to as they appear in the captioned Interim Application.

Submissions on behalf of the Applicant:

2. Mr. Kamod, learned counsel appearing on behalf of the Applicant at the outset, submitted that in the facts of the present case, given the inertia on the part of the Respondent, the question of the Respondent opposing any delay in the filing of the Written Statement and Counter-Claim really did not arise. He submitted that the present Suit being a Commercial Suit the stringent timelines that applied would apply with equal rigour to the Plaintiff. He, however, submitted that the Plaintiff's conduct in the present case demonstrated anything but that.
3. Mr. Kamod then submitted that the Respondent had initially, on 22nd September 2022, instituted a Suit before the Delhi High Court ("**Delhi Suit**") for the same reliefs as sought for in the captioned Suit. The Applicants had, however, opposed the maintainability of the Delhi Suit *inter alia*, on the ground that this Court had exclusive jurisdiction.

4. He then pointed out that, on 28th September 2022, the Delhi High Court had encouraged the parties to explore an amicable resolution of their disputes. Thereafter, on 19th October 2022, the Delhi Suit was withdrawn, with liberty granted to the Respondent to pursue its remedies before the appropriate forum.
5. Mr. Kamod was then at pains to point out that, despite the liberty granted by the Delhi High Court, the Respondent took no steps for over 13 months to file the present Suit. He submitted that it was only on 7th December 2023 that the Respondent applied for pre-institution mediation before the Mediation Centre of this Court. The Mediation Centre thereafter issued a non-starter report on 2nd February 2024, as the Applicant had not participated in the mediation proceedings.
6. Mr. Kamod was again at pains to point out that the Respondent then after a further delay of approximately nine months, on 14th November 2024, instituted the captioned Suit before this Court, along with an Interim Application (“**First IA**”).

7. He then submitted that the Suit was thereafter listed for hearing on 27th January 2025 but was adjourned to 3rd March 2025 for want of time. On 3rd June 2025, the Respondent withdrew the First IA and thereafter filed a Second Interim Application i.e., Interim Application 16677 of 2025 seeking substantially similar reliefs.
8. Mr. Kamod then submitted that the writ of summons was served upon the Applicant only on 26th August 2025, after which the Applicant filed the present Application on 14th November 2025, seeking condonation of 50 days' delay in filing its Written Statement. The Written Statement and Counter-Claim he pointed out were filed on 15th November 2025. The Respondent filed its reply to the Application on 20th January 2026.
9. Mr. Kamod then submitted that the dispute between the parties arises out of the alleged unauthorised continued use, by the Applicant, of certain proprietary software belonging to the Respondent after the expiry of the licence periods, namely, 31st March 2022 for the 'Recommendation/CDR' software and 30th June 2022 for the 'Analytics Software'. He submitted that

the delay of 50 days occurred because the dispute, and the record relevant thereto, extended far back in time, and the process of retrieving, reviewing, verifying and examining the underlying records and documents required considerable time and effort. He submitted that certain clarifications were also required from various departments of the Applicant, resulting in further delay, and that the delay was neither wilful nor deliberate but wholly unintentional and beyond the Applicant's control.

10. He then relied upon the decision of the Delhi High Court in ***P.R. Innovations (P) Ltd. v. L.G. Electronics India (P) Ltd.***,¹ to point out that the Delhi High Court had set aside the decision of the Trial Court dismissing an application seeking condonation of delay in filing a Written Statement in a Commercial Suit by applying the principles laid down by the Hon'ble Supreme Court in ***Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy***², which *inter alia* held that an application

¹ 2024 SCC OnLine Del 9803.

² (2013) 12 SCC 649.

for condonation of delay must be considered by adopting a liberal, pragmatic, justice-oriented and non-pedantic approach.

11. He then placed reliance upon the decision of the Hon'ble Supreme Court in

Collector, Land Acquisition, Anantnag v. Mst. Katiji,³ to point out that the

Hon'ble Supreme Court had held that refusal to condone delay could result

in a meritorious matter being thrown out at the threshold and the cause of

justice being defeated. He reiterated that the oft-cited principle that “every

day's delay must be explained” does not warrant a pedantic approach but is

required to be applied in a rational, common-sense and pragmatic manner.

He submitted that, where substantial justice and technical considerations are

pitted against each other, the cause of substantial justice ought to be

preferred, since the opposite party cannot claim a vested right in injustice

being done on account of a non-deliberate delay.

12. Applying these principles, Mr. Kamod submitted that the Delhi High Court,

in ***P.R. Innovations (P) Ltd.*** had held that, although the Written Statement

³ (1987) 2 SCC 107.

had not been filed within the initial period of 30 days, it had been filed within the extended period of 90 days, and the Delhi High Court accordingly held that Section 5 of the Limitation Act, 1963, ought to be construed liberally so as to ensure that the lis is adjudicated on merits rather than being decided on technicalities.

13.Mr. Kamod next placed reliance upon the recent judgment of this Court in ***Gateway Distriparks Limited v. Tata Steel Limited & Ors.***,⁴ wherein it was observed:

"A strict rigour which may apply in an ordinary suit for condonation of delay may not be apposite when the Commercial Court condones the delay beyond the initial 30 days and up to 120 days. Since the legislature has designedly used the words 'shall be allowed to file beyond the initial 30 days', ordinarily the Court should lean in favour of the condonation of delay within the window period of 31st day to 120 days, albeit after examining the justifiability of the reasons."

He submitted that this Court had further observed, in the same decision, that the provisions of Order VIII Rule 1 were procedural and that procedure was the handmaid of justice and ought not to be allowed to score a march over

⁴ Writ Petition No. 11322 of 2025 passed by Bombay High Court on 28th April 2026.

substantive justice, especially where there was substantial compliance with the peremptory procedural requirement. He pointed out that where the Written Statement was filed within the outer limit of 120 days, as in the present case, the strictness of technicalities may not be permitted to impede the cause of justice.

14.Mr. Kamod also then placed reliance upon the decision of ***Chaitanya Property Developers Pvt. Ltd. v. Kantadevi Rajkumar Gupta & Ors.***⁵ to submit that this Court condoned a delay of 84 days in filing a Written Statement in a Commercial Suit, holding that the delay was satisfactorily explained by the need to collate information and call for old records, and that it was not beyond the permissible period of 120 days under the Commercial Courts Act read with the proviso to Order VIII Rule 1 of the CPC. He also placed reliance on ***Kishor Jayantilal Jamnani v. Jehangir Jeutin Estate Pvt. Ltd.***⁶ wherein this Court affirmed the Trial Court's decision condoning delay in filing the Written Statement and recorded in the

⁵ IA(L) No. 4236 of 2023 in COMS Suit No. 285 of 2022 at the Bombay High Court.

⁶ Writ Petition No. 13633 of 2018 of the Bombay High Court.

application as "210 days", an apparent internal inconsistency in the figure which this Court has not independently reconciled on the ground that the need to collect important documents constituted a satisfactory ground for condonation, observing that denying the defendant the opportunity to file a Written Statement would seriously prejudice him by precluding him from leading evidence.

15. Mr. Kamod submitted that the contention raised by the Respondent in the condonation of delay Reply, namely, that the time for filing the Written Statement ought to be computed not from the date of service of the writ of summons, i.e., 26th August 2025, but from the date of service of the Plaint and documents upon the Applicant in December 2024, was wholly misconceived and contrary to the express statutory mandate. He then drew my attention to the proviso to Order VIII Rule 1 of the CPC, as substituted by Section 16 of the Commercial Courts Act, to point out that the same provides as follows:

"Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the

written statement on such other day, as may be specified by the Court, for reasons to be recorded in writing and on payment of such costs as the Court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record."

16. Mr. Kamod then submitted that the provision unambiguously computes the period of 120 days from the date of service of summons and not from any anterior date of knowledge or service of the Plaintiff. In support of this contention, he placed reliance upon the decision of this Court in the case of ***Axis Bank Limited v. Mira Gehani & Ors.***,⁷ wherein this Court held that the amendments introduced to Order V Rule 1 and Order VIII Rule 1 by the Commercial Courts Act mandate that the period of 120 days be computed from the date of service of summons and not from the date on which the defendant enters appearance or the date of service of the Plaintiff, this being necessary to ensure uniform implementation of the Commercial Courts Act.

⁷ 2019 SCC OnLine Bom 358.

17.He further placed reliance upon the decision of this Court in the case of ***Tardeo Properties Pvt. Ltd. v. Bank of Baroda***,⁸ to point out that this Court held that service of the writ of summons upon the defendant was a condition precedent for the commencement of the period for filing the Written Statement. He therefore submitted that the mere filing of a vakalatnama to represent the Defendant does not, by itself, lead to the conclusion that the defendant has been served with the writ of summons. He accordingly submitted that the Respondent's contention that the period should be reckoned from an earlier date was contrary to settled law and liable to be rejected.

18.Mr. Kamod then submitted that no prejudice would be caused to the Respondent if the condonation of delay Application was allowed. He then reiterated that the conduct of the Respondent was crucial and must also be considered.

⁸ 2007 SCC OnLine Bom 614.

19. Basis this, Mr. Kamod submitted that the delay of 50 days in filing the Written Statement be condoned and the Written Statement be taken on record in the substantive interest of justice.

Submissions on behalf of the Respondent:

20. Mr. Gupta, learned counsel appearing for the Respondent, submitted that the limitation for filing a Written Statement commenced from the point of mere knowledge of the institution of the Suit and not necessarily from formal service of the writ of summons.

21. He then submitted that Order VIII Rule 1 of the CPC, as amended by the Commercial Courts Act, prescribed a strict and time-bound regime for a defendant to file its Written Statement. He submitted that the proviso to Order VIII Rule 1 of the CPC expressly mandates that the Written Statement be filed within 30 days from the date of service of summons, extendable, for reasons recorded in writing and on payment of costs, up to, but not beyond, 120 days from the date of service of summons, upon expiry whereof the defendant forfeits the right to file a Written Statement.

22.Mr. Gupta submitted that, in the present facts, the Applicant was served with the Complaint via email on 19th November 2024 and thereby had knowledge of the Suit from that date. He submitted that on this computation, the maximum period of 120 days for filing the Written Statement would have expired, at the latest, by 18th April 2025, and that while the Applicant filed its Vakalatnama on 19th December 2024, no Written Statement was filed until 13th November 2025.

23.He then submitted that even assuming, without admitting, that the Applicant was entitled to compute the initial thirty-day period from the date of the formal service of the writ of summons upon the Applicant, i.e., 26th August 2025, that period would have expired on 26th September 2025. He therefore submitted that any delay beyond that date had to be considered together with the time already available to the Applicant before formal service of the writ of summons. He submitted that, from 19th December 2024, i.e., the date of filing of the Vakalatnama to 13th November 2025, i.e., the date of filing of the Written Statement, a total of 329 days had elapsed, nearly thrice the

permissible statutory limitation of 120 days. He submitted that accepting the Applicant's contention would render the statutory timeline nugatory, illusory, and enable parties to circumvent a mandatory provision through procedural formalism.

24. Without prejudice to the above, Mr. Gupta further submitted that even on the assumption that the period of limitation commenced from the date of service of the writ of summons, the condonation of delay Application lacked sufficient cause for the delay. Mr. Gupta then placed reliance upon the decision of this Court in *Atlanta Ltd., Mumbai and Ors. v. Dombivli Nagari Sahakari Bank Ltd.*,⁹ to submit that in the said decision the summons was served on the defendant on 31st January 2019, returnable on 11th February 2019, and the defendant filed its vakalatnama only on 2nd May 2019, thereafter moving an application for condonation of delay. He submitted that this Court had declined to condone the delay, holding that the explanation offered, namely, that the defendant, being a corporate entity working through

⁹ Commercial Suit No. 81 of 2019 at the Bombay High Court.

various departments and branches, required time to collect information and obtain internal approvals, could not be accepted as sufficient cause, particularly where the defendant had also failed to move its application for condonation with due diligence. He also drew my attention to the following observations in *Atlanta Ltd.*:

"The judgment in Axis Bank has already dealt with the reasons why time limits have been placed in commercial suits. These time limits have been treated casually by the defendant-bank. In the present case delay cannot be condoned simply by showing leniency because such discretion ought not to be exercised and is not contemplated by the stringent provisions of the Commercial Courts Act. The entire purpose of setting specific time-lines is to expedite the trial in Commercial Division matters."

25.Mr. Gupta then also placed reliance upon the decision in *Casablanca Apparels (P) Ltd. v. Polo Lauren Co. L.P.*,¹⁰ to point out that, the Delhi High Court, referring to the objects of the Commercial Courts Act, 2015, and the decision of the Hon'ble Supreme Court in *Jharkhand Urja Utpadan Nigam Ltd. v. Bharat Heavy Electricals Limited*,¹¹ observed that once specific timelines were fixed under the Commercial Courts Act, parties were put to

¹⁰ 2025 SCC OnLine Del 5191.

¹¹ 2025 INSC 533.

notice that they must carefully contest Suits filed as Commercial Suits, failing which adverse consequences may follow for lack of diligence. He further pointed out that, in that decision, reliance was placed on the decision of the Hon'ble Supreme Court in the case of ***Government of Maharashtra v. Borse Brothers Engineers & Contractors Pvt. Ltd.***,¹² which held that the power to condone delay in commercial matters is an exception, exercised only where the party has acted bona fide and with due diligence, not negligently or casually. He submitted that the Delhi High Court accordingly held that the expression "sufficient cause", in the context of the Commercial Courts Act, must be construed strictly and not liberally, and that the statutory consequence of forfeiture was automatically attracted where the outer limit of 120 days was crossed.

26. Mr. Gupta submitted that it is well settled that the Court cannot, in commercial matters, permit filing of a Written Statement beyond 120 days, the consequence under Order VIII Rule 1 of the CPC being automatic and

¹² AIR ONLINE 2021 SC 152.

absolute, such that the right to file a Written Statement stands forfeited and the Court is denuded of jurisdiction to take it on record. He submitted that it was wholly implausible that the Applicant could have required such an extensive timeline, given that the litigation between the parties had in fact commenced as far back as September 2022 with the filing of the Suit before the Delhi High Court, and that no specific ground had been made out by the Applicant to justify why it did not already have the necessary records at its disposal or had not already reviewed, verified, compiled, and assessed them.

27. Mr. Gupta also placed reliance upon the decision of the Hon'ble Supreme Court in *Thirunagalingam v. Lingeswaran*¹³ and submitted that it was well settled that while considering a plea for condonation of delay, the first and foremost duty of the Court was to ascertain the bona fides of the explanation offered by the party seeking condonation, rather than to begin with the merits of the main matter. He pointed out that only where the explanation for the delay and the opposition were equally balanced could the Court consider

¹³ 2025 SCC OnLine SC 1093.

the merits of the main matter for condoning the delay. He also pointed out that the Hon'ble Supreme Court had further held that delay should not be condoned merely as an act of generosity and that the pursuit of substantial justice must not come at the cost of causing prejudice to the opposing party.

28. Basis this, Mr. Gupta submitted that the Applicant had failed to furnish any credible explanation for the delay, notwithstanding that it had more than 249 days at its disposal even prior to formal service of the writ of summons, and accordingly the condonation of delay Application deserved to be dismissed with costs.

Reasons and Conclusion:

29. Having heard learned counsel for the parties, considered their rival contentions, and the case law upon which reliance is placed, I find that the application deserves to be allowed. I say so for the following reasons:

A. At the outset, the Respondent's contention that the period for filing the Written Statement is to be computed either from the date of service of the Plaintiff or from the Defendant's knowledge of the Suit is plainly untenable.

The present Suit is a Commercial Suit to which the proviso to Order VIII Rule 1 of the CPC, as substituted by Section 16 of the Commercial Courts Act 2015, applies. The said proviso clearly provides that the period of 30 days for filing the Written Statement, extendable up to the outer limit of 120 days, is to be computed “from the date of service of summons”. This is now no longer *res integra* in light of the decisions of this Court in ***Axis Bank*** and ***Tardeo Properties***, upon which reliance was placed by the Applicant. Hence, the Respondent’s contention that the said period is to be reckoned from the date of service of the Plaint, or from the Applicant’s mere knowledge of the institution of the Suit, and not from the service of the writ of summons, needs only to be stated to be rejected.

B. In the present case, there is no dispute that the Writ of Summons was served on 26th August 2025. Hence, the only question that arises is whether the Applicant has demonstrated sufficient cause for the delay. *Firstly*, the delay in the present case is 50 days when calculated from the date of service of the Writ of Summons. *Secondly*, in my view, the delay has, in the facts of this

case, been sufficiently explained by the Applicant, particularly with regard to the time required to retrieve, verify and compile records pertaining to a long-standing dispute and to obtain the necessary internal clarifications, for the reasons more particularly set out in the Application.

C. As already noted in (B), the delay is 50 days, which is well within the 120-day period under the proviso to Order VIII Rule 1 of the CPC. Therefore the Applicant's reliance on ***Gateway Distriparks***, in support of the contention that the rigour ordinarily applicable to an unexplained delay in filing a Written Statement need not be applied with the same degree of stringency where condonation is sought within the window period of the 31st to the 120th day, is apposite and, in my view, applies on all fours to the facts of the present case. Equally applicable to the facts of the present case are the decisions in ***Chaitanya Property Developers*** and ***Kishor Jayantilal Jamnani***, which condoned comparable, and in some cases longer, delays for substantially similar reasons. Furthermore, the Hon'ble Supreme Court in the case of ***Esha Bhattacharjee and Collector, Land Acquisition, Anantnag***

has laid down that the Court, while exercising its discretion in applications for condonation of delay, must adopt a liberal and justice-oriented approach, particularly where the delay is satisfactorily explained.

D. I find that the decisions relied on by the Respondent do not, in the facts of the present case, disentitle the Applicant from the relief sought for. In *Atlanta Ltd.*, the delay had already crossed the statutory outer limit of 120 days, even when reckoned from the date of service of the summons. The defendant had also failed to move the application for condonation with due diligence. Neither circumstance arises in the present case. Likewise, the decisions in *Casablanca Apparels* and *Thirunagalingam* caution against adopting an unduly liberal approach to condonation; neither decision establishes that a bona fide delay occurring within the statutory outer limit must invariably be refused. None of these decisions would, therefore, apply to the facts of the present case.

E. Another aspect which, in my view, must also be considered in the facts of the present case is that the object of the Commercial Courts Act, 2015, in

prescribing strict timelines is to ensure the expeditious disposal of commercial disputes. In my view, and having regard to the manner in which the Court is required to approach such timelines, that objective binds both parties and cannot be invoked selectively by a litigant whose own conduct does not demonstrate expedition or diligence. The facts of the present case show that the Plaintiff allowed the dispute to lie dormant for over thirteen months after the withdrawal of the Delhi Suit before applying for pre-institution mediation in December 2023, and after the non-starter report of February 2024, took a further nine months to institute the captioned Suit in November 2024, which was registered only in August 2025 . Thus, there is a lapse of nearly three years in all in the Respondent's pursuit of the matter. I must hasten to add that while this would not, by itself, determine whether the Applicant's delay ought to be condoned, it is certainly a relevant factor to be considered in the context of a party who seeks to oppose condonation on the ground of delay when the record bears out that the party opposing the delay has itself not proceeded with due diligence or expedition.

Also, and crucially, the Respondent has not so much as pleaded what prejudice, if any, would be caused to the Respondent if the delay is condoned.

31. Hence, for the reasons stated above in (A) to (E) , I pass the following Order:

ORDER

- (i) The Interim Application is allowed in terms of prayer clause ‘(a)’.
- (ii) The Interim Application is accordingly disposed of.
- (iii) There shall be no order as to cost.

[ARIF S. DOCTOR, J]