

K.S. Jadhav

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**INTERIM APPLICATION NO.3719 OF 2022
IN
COMMERCIAL SUIT NO.67 OF 2022
WITH
INTERIM APPLICATION (L) NO.26513 OF 2021
IN
COMMERCIAL SUIT NO. 67 OF 2022**

1. Jem Fiscal Ltd.	...Applicants/
2. Mr. Nazir Rashid Hakeem	Original Defendant
	Nos. 1 & 2

Versus

Rajkumar Jivraj Sekhani and Ors.	...Respondents /
	Plaintiffs

Ms. Aarti Sonawane i/b Vis Legis Law Practice, Advocate for
Applicants/Original Defendant Nos. 1 & 2.

Mr. Sachin J. Kadam, Advocate for Respondents/Plaintiffs.

CORAM : R.I. CHAGLA, J.

DATE : 10th November, 2022.

ORDER :

1. Heard the learned Counsel appearing for the parties.
2. By this Interim Application, the Applicants/Original Defendant Nos. 1 and 2 have sought condonation of delay of 92

days in filing Written Statement and for acceptance of Written Statement of original Defendant Nos. 1 and 2, on the file of this Court.

3. The Applicant has stated that the Writ of Summons was served on 5th May, 2022 and Defendant Nos. 1 and 2 were required to file their Written Statement within 30 days from Service of Writ of Summons. There was delay in filing Written Statement which has been explained in Paragraph 4, 5 and 6 of the Interim Application. It is stated that upon the service of Writ of Summons there was ensuing Court vacation. In view of the complex transaction in the present suit, there was significant time taken for the original Defendant No.2 to explain the transaction and details to his advocate. There was also delay in obtaining the necessary documents in support of Applicant's defence and the Applicant was only in a position to provide the necessary documents and brief their Advocate in or around middle of June, 2022.

4. It is further stated in Paragraph 6 of the Interim

Application that the original Defendant No.2's daughter had undergone major surgery in or around first week of July, 2022. In view thereof, when the Advocate had shared the draft of the Written Statement with original Defendant No.2 for his approval and comments, the original Defendant No.2 was not in a position to address the draft Written Statement and this resulted in delay in filing of the Written Statement.

5. The Applicant has relied upon the Commercial Courts Act, 2015 which allows the Advocate an additional period of 90 days after expiry of 30 days from service of Writ of Summons and the total period of 120 days ended on 2nd September, 2022, The Interim Application has been taken out on 4th August, 2022 within 120 days.

6. Learned Advocate for the original Plaintiff has formally objected to the Interim Application.

7. Having considered these averments in the Interim Application as well as the reasons for the delay in filing the Written Statement, in my view, satisfactorily explanation has

been given for the delay. Further, the delay is not beyond 120 days from the service of Writ of Summons. Considering that the Writ of Summons was served on 5th May, 2022 and the Interim Application was filed on 4th August, 2022 under the Commercial Courts Act, 2015, this Court can allow the Defendants to file the Written Statement within the additional period of 90 days after expiry of 30 days from the Writ of Summons. This is provided that satisfactorily explanation for the delay, is made out. In view of the finding that delay has been satisfactorily explained, the relief sought for Interim Application requires to be granted. Hence, the following order :

- i) Delay of 92 days in filing Written Statement is condoned.
- ii) Applicants/Defendant Nos. 1 & 2 are allowed to file their Written Statement and same shall be taken on record.
- iii) Interim Application No.3719 of 2022 is accordingly disposed of.

[R.I. CHAGLA J.]