

Sharayu Khot.

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

INTERIM APPLICATION NO. 3706 OF 2022

IN

COMMERCIAL SUIT NO. 11 OF 2022

Raj Realtors & Ors.

...Applicants/
Defendant Nos.1 to 4

In the matter of

Kewal Kiran Realtors and Infrastructures
Pvt.Ltd. & Anr.

...Plaintiffs

Versus

Raj Realtors & Ors.

...Defendants

Mr. Rohaan Cama, Mr. Abhishek Adke a/w Ms. Vibha Joshi for the
Applicants/Defendant Nos. 1 to 4.

Ms. Adity Shiralkar a/w Mr. Vijay Poojari i/by M/s. Shiralkar & Co.
for the Plaintiffs.

Ms. Dhruti Kapadia for the Defendant No. 8-SRA.

CORAM : R.I. CHAGLA J

DATE : 31 January 2023

ORDER :

1. By this Interim Application, the Applicants/Defendant
Nos. 1 to 4 have sought condonation of delay of 82 days in filing the

Written Statement on behalf of the Defendant Nos. 1 to 4 and for the Registry to accept the Written Statement on record.

2. The Applicants have stated that the Defendant No. 2 being the eldest, had at all times represented the Defendant No. 1 in transactions, correspondence and communications with the Plaintiff and Defendant Nos. 6 to 8. Defendant No. 2 is completely aware of the documents, facts and circumstances of the present matter and is capable of giving instructions to the advocates for preparing the Written Statement.

3. In paragraph 6 of the Interim Application, explanation has been given for the delay of 82 days in filing the Written Statement. It appears from the sub-paragraphs of paragraph 6 that the Defendant No. 2 was suffering from typhoid in the month of January 2022 and had other health related issues for which the doctors examination reports have been relied upon. Due to his ill health and repeated visits to the hospital, Defendant No. 2 was not in a position to give instructions to the advocates for the Defendant Nos. 1 to 4 for preparing the Written Statement. In paragraph 6.8, it is stated that it was only in the second half of April 2022 that the

Defendant No. 2 having partially recovered from his health issues travelled to Mumbai. In or around 19th April 2021 an advocate was appointed by the Applicants and instructions were given for preparing Written Statement on behalf of the Applicants. Defendant No. 2 thereafter, immediately travelled back to his house in Goa in view of his decreased immunity. The Written Statement was prepared and the same was notarised on 20th June 2022.

4. It is further stated by the Applicants that the Defendant No. 2 had given power of attorney to his brother Mr. Suresh Raj, Defendant No. 3 for signing the Application, Written Statement and Vakalatnama on behalf of the Defendant No. 2 and which power of attorney was notarised on 24th April 2022.

5. Accordingly, the Applicants have stated that the delay in filing the Written Statement upon taking into account the order passed by the Supreme Court dated 10th January 2022, which has extended period of limitation till 28th February 2022, there has been delay of 82 days in filing the Written Statement.

6. Plaintiffs have filed Affidavit in Reply dated 29th June

2022 to the Interim Application. It has been stated that there is no proper or satisfactory explanation for condonation of delay and that Interim Application be rejected on that ground.

7. I have considered the averments in the Interim Application as well as the reasons given for delay in filing the Written Statement in the sub-paragraphs of paragraph 6. I have further taken note of the fact that Defendant No. 2 being completely aware of the facts and circumstances of the present matter was giving instructions to the advocates for preparing the Written Statement and on account of ill health, he was unable to do so till April 2022. Accordingly, the reasons for the delay in filing the Written Statement has been satisfactorily explained and the relief sought for in the Interim Application is required to be granted. Hence, the following order is passed.:-

- (i) Delay of 82 days in filing the Written Statement which is not beyond the permissible 120 days from service of writ of summons upon taking into account the order dated 10th January 2022 of the Supreme Court which has extended the period of limitation till 28th

February 2022, is condoned.

- (ii) Applicants/Defendant Nos. 1 to 4 shall file the Written Statement within a period of two weeks from the date of this order.
- (iii) Written Statement on behalf of the Defendant Nos. 1 to 4 shall be taken on record by the Registry, if filed within the stipulated time.
- (iv) Interim Application is accordingly, disposed of.

[R.I. CHAGLA J.]