

VRJ

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1984 OF 2024

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Chandan Store (D.D) & Ors. ... Petitioners

V/s.

Hina Shishir Chheda

Through Her Constituted Attorney

Jayesh Ratilal Gada ... Respondent

WITH

WRIT PETITION NO.1986 OF 2024

Chandan Store (D.D) & Ors. ... Petitioners

V/s.

Jayesh Ratilal Gada

... Respondent

Mr. Yogendra M. Kanchan i/by YMK Legal for the
petitioners.

Ms. Janhavee Joshi i/by Mr. Manish P. Jagani for the
respondent.

CORAM : AMIT BORKAR, J.

DATED : JULY 1, 2024

P.C.:

1. The petitioners are challenging the order passed by the City Civil Court in Summary Suit No.497 of 2018 rejecting the Notice of Motion taken out by the petitioners for condonation of delay seeking recall of the order dated 15 December 2021 and further seeking permission to leave to defend after lapse of 10 days from

the date of Summons for Judgment.

2. It is not in dispute that the Summons for Judgment was served on the petitioners on 25 October 2018. On 8 November 2021, the Trial Court rejected challenge to the maintainability of the suit raised by the petitioners. On 15 December 2021, the Trial Court passed an order to proceed with the suit without reply to the Summons for Judgment.

3. The petitioners, therefore, applied for permission for leave to defend after lapse of 496 days from the date of service of Summons for Judgment.

4. The reasons assigned in the notice of motion are two reasons: (i) pendency of the notice of motion challenging maintainability of the suit; (ii) Corona Pandemic situation from March 2020.

5. The Trial Court rejected the motion observing that nothing prevented the defendants from filing reply to summons for judgment. Even during pendency of the Notice of Motion challenging maintainability of the suit.

6. The second reason assigned is of Corona Pandemic started from March 2020. Considering the reason assigned by the Trial Court that the petitioners could have filed reply to summons for judgment even during pendency of the Notice of Motion challenging maintainability of the suit cannot be termed as perverse. Once the first reason assigned by the petitioners was not found to be sufficient cause, the second reason of Corona Pandemic situation from March 2020 was of no avail to the

petitioners as the Summons for Judgment was served on the petitioners on 25 October 2018 and the Notice of Motion was filed after the period of 496 days.

7. The approach adopted by the Civil Court cannot be termed as perverse. The writ petitions are dismissed.

(AMIT BORKAR, J.)