

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

**INTERIM APPLICATION NO.1043 OF 2024
IN
SUIT NO.3 OF 2021
WITH
INTERIM APPLICATION NO.573 OF 2023
IN
SUIT NO.3 OF 2021
WITH
INTERIM APPLICATION NO.530 OF 2019
IN
SUIT NO.3 OF 2021
AND
SUIT NO.3 OF 2021**

Veekaylal Investment Company Private Limited ... Plaintiff

Vs.

Rushi Constructions and ors. ... Defendants

Mr. Dhawal Shetia with Ms. Mehrunissa Tole i/by Mr. Rajeev Sharma, Advocates for the Plaintiff and for the Respondent in IA No.1043 of 2024.

Mr. Rajiv Narula with Mr. Tarang Jagtiani i/by M/s Jhangiani Narula and Associates, Advocates for the Defendants No.1 to 3 in IA No.1043 of 2024 and for the Defendants No.1 to 3 and 5 in Suit No. 3 of 2021.

Mr. Aadil Parsurampuriah with Mr. Mehul Rathod and Mr. Darshan Vora i/by M/s KVT Legal, Advocates for the Defendant No.11 in Suit No.3 of 2021.

Ms. Minal N. Doshi, Advocate for the Respondent No.4.

Mr. G.O. Giri with Mr. Sunil Sonawane, Advocates for the Respondents No. 9 and 10.

CORAM : ABHAY AHUJA, J.

DATE : 01 JULY, 2024.

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INTERIM APPLICATION NO.1043 OF 2024

**IN
SUIT NO.3 OF 2021**

1. This Interim Application seeks condonation of delay in filing written statement and for setting aside the order dated 5th January, 2024 of the Prothonotary and Senior Master transferring the Suit as against the said Defendants/Applicants to the list of undefended suits.

2. Mr. Narula, learned counsel appears for the Applicants and submits that although the development of the project has been completed long back, however, the Plaintiff has filed the suit for declaration that the Defendants No.1 to 3 and 11 have no right, title and interest in respect of the suit property and that the Power of Attorney granted by the Plaintiff dated 19th March, 1994 and an Agreement of Sale dated 21st April, 2015 and the Power of Attorney of the same date are illegal, null and void and have also challenged approvals and permissions granted to the Applicants. Mr. Narula would submit that the Applicants have received the Writ of Summons in January, 2021 which period falls within the period excluded by the suo-moto order of the Hon'ble Supreme Court. Learned counsel submits that though the last date to file the written statement falls within

the said excluded period, that on 6th November, 2023, direction was given by the Prothonotary and Senior Master to file the written statement by 4th January, 2024. However, the same could not be filed although the written statement as on the date of filing of this Application viz. on 26th March, 2024 was ready and is also annexed to the Application. Mr. Narula would submit that there is an Interim Application which had been filed by the Plaintiff for ad-interim and interim reliefs and the Applicants herein have also filed an affidavit-in-reply opposing the grant of ad-interim and interim reliefs on 28th October, 2021. That the Applicants could not file the written statement because of the skeletal staff in view of Covid 19 pandemic. It is submitted that the Applicants requested the Advocate to prepare written statement in the middle of the year 2022 and the Advocates sought various documents. That since several of the documents were 30 years old and the files containing those documents were not traceable, the written statement could not be filed. Learned counsel further submits that the office also shifted from “Krishna Kunj”, Vile Parle (E) to “Patel House” M.G. Road, Vile Parle (East) and the files containing relevant documents were misplaced and the Applicants were unable to trace the same. That therefore despite directions passed on 6th November, 2023, written statement could not be finalized and filed.

Thereafter, the Suit appeared before the Prothonotary and Senior Master on 5th January, 2024 and the suit has been transferred from that date to the list of undefended suits. Mr. Narula submits that after the Applicants retrieved the files and reconstructed the record by obtaining documents/copies from their ex-partners they have finalized the written statement on 21st March, 2024. Mr. Narula would submit that the delay is not intentional. That if this Court permits the Applicants to file the written statement, no prejudice would be caused to the Plaintiff as the Plaintiff has also filed an Interim Application for amending the plaint which is pending. Besides, the Interim Application for ad-interim, interim reliefs still remains pending. Mr. Narula would submit that the trial has also not commenced. That therefore, this Court condone the delay upon terms as this Court would deem appropriate.

3. Mr. Dhawal Shetia, learned counsel for the Respondents opposes the Interim Application submitting that although the service of writ of summons has been completed in January, 2021 and although replies have been filed by the Applicants to the Interim Application seeking ad-interim, interim reliefs alongwith various documents despite that no written statement has been filed and therefore, there is no sufficient cause in

condoning the delay. Mr. Shetia submits that in any event, if this Court is inclined to condone the delay, costs be imposed.

4. Heard the learned counsel and considered the rival contentions.

5. It has not been disputed before this Court that the project undertaken by the Applicants has not been completed. It is also not in dispute that the Notice of Motion for ad-interim, interim reliefs is still pending and there is also an Interim Application seeking to amend the plaint which is pending. The trial has not yet commenced. Although the writ of summons has been received by the Applicants in January, 2021, it cannot be denied that the period of limitation fell within the period that has been excluded by the suo-moto order of the Hon'ble Supreme Court. Learned Counsel for the Applicants has explained in detail the reasons as to why it took time in tracing the documents which were 30 years old and which were necessary to prepare the written statement and that the reply was also filed opposing the Interim Application by the Plaintiff seeking ad-interim relief/interim reliefs.

6. Although the period of limitation cannot be counted from the date on which directions were given to file written statement by the office of the Prothonotary and Senior Master, but it needs to be noted that in the present circumstances in the Suit, reliefs have been claimed against the Respondents for declaration that there is no right, title and interest in the suit property and to declare the transactions, illegal, null and void where it is claimed that the project has been completed. Therefore, it would not be fair to disentitle the Applicants from filing the written statement to defend the case. In my view therefore, there is sufficient cause explained for the delay caused in filing the written statement.

7. In the case of *Kailash Vs. Nanhku and ors.*¹ The Hon'ble Supreme Court has observed that the timeline to file written statement in Order VIII Rule 1 of the Code of Civil Procedure, 1908 is directory and not mandatory and that in an exceptional situation the Court may extend the time for filing the written statement even though the period of 30 days and 90 days referred to in the said provision has expired.

1 2005(4) SCC 480

8. This Court is therefore of the view that the delay in filing the written statement be condoned in view of the law settled by the Hon'ble Supreme Court.

9. In the case of *Bharat Kalra vs. Raj Kishan Chabra*² the Hon'ble Supreme Court has held that if the delay in filing written statement can be compensated with costs, denying benefit of filing written statement would be unreasonable. I therefore propose to balance the inconvenience caused to the Plaintiff by the delay by imposing costs to be paid to the Plaintiff.

10. In the circumstances, I am inclined to allow the Application subject to costs of Rs.25,000/- to be paid by the Applicants No.1 to 3 to the Plaintiff within a period of two weeks.

11. Subject to the above, the order dated 5th January, 2024, transferring the Suit to the list of undefended Suit as regards to the Applicants No.1 to 4 is hereby set aside. The delay in filing the written statement is condoned. The written statement dated 21st March, 2024 be filed in the Registry within a period of three weeks.

2 2022 SCC Online SC 613

12. Application accordingly stands disposed.

**INTERIM APPLICATION NO.573 OF 2023
IN
SUIT NO.3 OF 2021**

13. This Interim Application seeks amendment to the plaint.

14. Learned counsel present in Court submit that the pleadings are complete and the same be heard.

15. Accordingly, list this Interim Application for hearing on 1st August, 2024.

**INTERIM APPLICATION NO.530 OF 2019
IN
SUIT NO.3 OF 2021**

16. At the joint request of the learned counsel for the parties, list on 1st August, 2024.

(ABHAY AHUJA, J.)