

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

INTERIM APPLICATION NO. 1801 OF 2024
IN
SUIT NO. 149 OF 2023

Najma Mijaan Beg	...Applicant
<u>In the matter between</u>	
Aslam Kassam Merchant and Ors.	...Plaintiffs
V/s.	
Ashraf Saudagar Kassam Merchant & Ors.	...Defendants

Ms. Samridhi Lodha with Ms. Aishwaryajeeta Tawde i/b Kanga & Co.
for Applicant/Defendnt No.6.
None for Respondents.

CORAM : ABHAY AHUJA, J.
DATE : 3rd JULY, 2024

PC. :

1. This Application seeks condonation of delay of six days on behalf of the Defendant No. 6 in filing written statement on behalf of the said Defendant.

2. Ms. Lodha, learned Counsel appears for the Applicant and submits that a copy of the Application has been served upon the Plaintiff on 16th March, 2024 and seeks to tender across the bar a copy of the Affidavit of service refering in particular to page 7, which contains an acknowledgement given by one Vazir of the Plaintiff.

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3. Ms. Lodha, learned Counsel submits that although the Defendant had waived the service of writ of summons on 3rd August, 2023, however, by an order dated 9th June, 2024, the learned Prothonotary and Senior Master had fixed 23rd January, 2024 as the date of filing the written statement.

4. Learned Counsel would submit that earlier after finalizing the written statement, since the Applicant was travelling from 29th October, 2023, the hard copies were sent to him in the USA for execution after which the written statement was declared on 22nd January, 2024 before the Consulate General of India in San Fransisco in USA, which is within the time limit given by the learned Prothonotary and Senior Master. However, the said written statement was received in India only on 29th January, 2024 i.e. beyond the period fixed by the learned Prothonotary and Senior Master and therefore, there has been a delay of six days and that the said delay be condoned as it is unintentional as the Applicant was not in India.

5. Having heard the learned Counsel and having considered the submissions and perused the Application as well as the affidavit of service, this Court is of the view that this is an exceptional situation

and there is sufficient cause explaining the delay of six days and in view of the law settled by the Hon'ble Supreme Court in the case of *Kailash Vs. Nankhu*¹, the delay can be condoned as the Applicant was in USA and also had declared the written statement before the Consulate General of India before the time prescribed by the learned Prothonotary and Senior Master and only because the hard copy of the written statement had to be sent to India, where it was received on 29th January, 2024, that the delay has occurred.

6. Accordingly, I am inclined to condone the delay of six days. The delay is hereby condoned.

7. Registry is directed to accept the written statement. The Application accordingly stands disposed.

(ABHAY AHUJA, J.)

¹ (2005) 4 SCC 480