

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3964 OF 2025**

Pankti Jignesh Goradia ... Petitioner
versus
Vishrut Enterprises Pvt. Ltd. and Ors. ... Respondents

Mr. Alankar Kirpekar with Mr. Susmit S. Phatale, Mr. Somnath Kale, Mr. Ayush Tiwari i/by Mr. Susmit S. Phatale, for Petitioner.
Mr. Suresh Sabrad, for Respondent Nos.1 and 2.

CORAM: N.J.JAMADAR, J.

DATE : 21 APRIL 2025

JUDGMENT :

1. Rule. Rule made returnable forthwith. With the consent of the parties, heard finally.
2. By this Petition under Articles 226 and 227 of the Constitution of India, the Petitioner takes exception to two orders; first, an order dated 5 August 2024 passed by the learned Civil Judge, Sr. Division, Panvel, whereby the application preferred by the Petitioner – Defendant No.1 to refer the dispute to arbitration, came to be rejected and, second, another order dated 17 December 2024, whereby the application preferred by the Petitioner for condonation of delay in filing written statement, also came to be rejected with costs.
3. The background facts leading to this Petition, can be summarized as under :

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3.1 Respondent No.1 – Plaintiff No.1 is a Company duly incorporated under the provisions of the Companies Act,1956. Respondent No.2 is the director of Respondent No.1 Company. Defendant No.1 is the proprietress of the firm M/s. Shreeji Associates.

3.2 The Plaintiffs claimed to have authorized Defendant No.1, subject to the performance of her reciprocal promises, only to market and sell 50% of the constructed area comprising of flats/shops specifically enumerated in the Schedule Annexure H to the Agreement dated 11 September 2013.

3.3 Defendant No.1 allegedly committed breach of the terms of the contract and had illegally and unlawfully agreed to sell flats/shops adumbrated in Annexure H which belonged to the Plaintiffs. Defendant Nos.2 to 33 have agreed to purchase those flats/shops.

3.4 Asserting that those Agreements between Defendant No.1, on the one part, and Defendant Nos.2 to 33, on the other part, are void ab initio and liable to be so declared and cancelled, Respondent Nos.1 and 2 have instituted a suit for the declarations that the Plaintiff No.1 is the absolute owner of the flats/shops adumbrated in Annexure H to the Agreement dated 11 September 2013; Defendant No.1 does not have any right, title or interest whatsoever qua the said flats/shops; that the various Agreements under which Defendant No.1 had purportedly agreed to sell and Defendant Nos.2 to 33 have allegedly agreed to purchase the flats/shops, are void ab initio; Defendant No.1 is liable

to refund the entire money she had received from Defendant Nos.2 to 33 under the alleged void Agreements; and deliver up those Agreements, and direct the Defendant No.1 to refund the money she had received from Defendant Nos.2 to 33 along with interest.

3.5 Suit summons was served on the Defendants and the Defendant No.1 entered appearance on 17 August 2017.

3.6 An application was preferred by Defendant No.5, purportedly at the instance of Defendant No.1, to refer the dispute to arbitration under Section 8 of the Arbitration and Conciliation Act, 1996 (the Act, 1996). The said application was allowed by the learned Civil Judge by an order dated 30 July 2019.

3.7 The Plaintiffs approached this Court in Writ Petition No.9453 of 2019 and, by an order dated 27 August 2019, this Court had granted ad-interim relief. Eventually, the said Writ Petition came to be allowed by an order dated 19 April 2024. This Court expedited the trial of the suit.

3.8 It seems that the Petitioner – Defendant No.1 did not file the written statement. Instead, an application to refer the parties to arbitration came to be filed on 18 July 2024. By the first impugned order dated 5 August 2024, the learned Civil Judge was persuaded to reject the said application.

3.9 In the meanwhile, the trial proceeded. Other defendants cross-examined the Plaintiffs' witnesses. The Plaintiffs closed their evidence.

3.10 The Petitioner preferred an application for condonation of delay in filing Written statement on 17 December 2024. By the second impugned order dated 17 December 2024, the learned Civil Judge was persuaded to reject the application opining that the reasons ascribed for the delay did not merit acceptance. Despite being cognizant of the fact that this Court had directed the trial Court to dispose of the suit within a period of six months, Defendant No.1 resorted to dilatory tactics. The application was not bonafide. Thus, the learned Civil Judge rejected the application with costs of Rs.25,000/-.

3.11 Being aggrieved, the Petitioner has invoked the writ jurisdiction.

4. Respondent Nos.1 and 2 have resisted the Petition by filing an affidavit in reply. An endeavour has been made to demonstrate that the applications for referring the parties to arbitration as well as to condone the delay and take written statement of Defendant No.1 on record, were filed belatedly with an oblique motive to delay the disposal of the suit. The reasons ascribed in the application for condonation of delay are ex-facie untenable.

5. I have heard Mr. Kirpekar, learned Counsel for the Petitioner, and Mr. Suresh Sabrad, learned Counsel for Respondent Nos.1 and 2, at some length.

6. Mr. Kirpekar, learned Counsel for the Petitioner, would submit that, in the face of a clear and explicit arbitration clause in the Joint Development Agreement dated 11 September 2013, by and between Plaintiffs and

Defendant No.1, the trial Court could not have refused to refer the parties to arbitration. The application dated 18 July 2024 preferred by Defendant No.1 to refer the dispute to arbitration is required to be appreciated in the light of such clear and explicit clause (30) in the said Joint Development Agreement. Therefore, the fact that the Defendant No.1 had preferred an application under Section 8 of the Act, 1996 could not have been arrayed against Defendant No.1 in rejecting her application for extension of time to file written statement.

7. Mr. Kirpekar strenuously submitted that the circumstances in which written statement could not be filed were not properly appreciated by the trial Court. It is undisputed that on the application preferred by the Defendant No.5 on 24 August 2017 itself, the dispute was referred to arbitration by an order dated 27 August 2019, this Court granted ad-interim relief and the same continued till the disposal of Writ Petition No.9453 of 2018 by an order dated 19 April 2024. Thus, the said period ought not to have been considered in computing the period of delay in seeking permission to file written statement.

8. In any event, according to Mr. Kirpekar, Defendant No.1 had ascribed justifiable reasons for granting extension of time. Defendant No.1, being a mother of two children, one of whom is an infant, could not rigorously pursue the proceedings before the trial Court. However, the overriding object of advancement of cause of justice by permitting the Defendant No.1 to file the

Written Statement so as to adjudicate the matter on merit, ought to have been kept in view by the trial Court. Delay, by itself, could not have been the sole reason for rejecting the permission to file the written statement.

9. Reliance was placed by Mr. Kirpekar on the judgment of the Supreme Court in the case of Collector, Land Acquisition, Anantnag and Anr. V/s. Mst. Katiji and Ors.¹.

10. In opposition to this, Mr. Sabrad, learned Counsel for the Respondent Nos.1 and 2 – Plaintiffs, stoutly resisted the prayer to permit Defendant No.1 to file written statement, at this stage. Mr.Sabrad took the Court through the developments which occurred since the Writ Petition was allowed by this Court by an order dated 19 April 2024, with a clear direction to the trial Court and the parties to ensure that the suit is disposed within a period of six months from the date of the said order.

11. Emphasis was laid on the fact that this Court had even warned Defendant No.1 – Respondent No.1 therein, against seeking adjournments. Yet, for over 30 scheduled dates of hearing, before the trial Court, no steps were taken to file an application seeking condonation of delay in filing the written statement. The entire exercise has been driven by a design to further delay the disposal of the suit which has reached an advanced stage as the witnesses of other Defendants are being cross-examined.

¹ (1987) 2 SCC 107

12. Mr. Sabrad further submitted that no reason, much less, justifiable one, has been ascribed in the application for condonation of delay. Therefore, the trial Court rightly exercised the discretion not to permit Defendant No.1 to file written statement after more than six years of the service of the summons. To buttress this submission, Mr. Sabrad placed reliance on a judgment of the Supreme Court in the case of Mohammed Yusuf V/s. Fajj Mohammad and Ors.², and an order passed by the Supreme Court in the case of Lingeswaran etc. V/s. Thirunagalingam³.

13. I have given careful consideration to the submissions canvassed across the bar. With the assistance of the learned Counsel for the parties, I have also perused the material on record.

14. At the outset, it is necessary to note that the challenge to the order dated 5 August 2024, whereby the learned Civil Judge declined to refer the parties to arbitration by invoking the provisions contained in Section 8 of the Act, 1996 need not detain the Court. The said order refusing to refer the parties to arbitration is appealable under Section 37(1)(a) of the Act, 1996. In the face of such specific statutory remedy, the exercise of supervisory writ jurisdiction is not at all warranted.

15. This takes me to the legality, propriety and correctness of the order dated 17 December 2024, whereby the learned Civil Judge declined to

² (2009) 3 SCC 513

³ Petition for Special Leave to Appeal (C) Nos.2054-2055 of 2022 dated 25 February 2022.

condone the delay in filing the written statement and permit the Defendant No.1 to file the Written statement. Incontrovertibly, the summons in the suit was served on Defendant No.1 and she had entered appearance in the month of August 2017. Evidently, Defendant No.1 did not file written statement till the order dated 30 July 2019, whereby the parties were referred to arbitration on an application preferred by Defendant No.5 under Section 8 of the Act, 1996. The Plaintiffs preferred WP No.9453 of 2019 before this Court. By an order dated 27 August 2019, this Court granted ad-interim relief.

16. It is imperative to note the nature of the ad-interim relief granted by this Court. By the said order dated 27 August 2019, this Court had stayed till the next date the directions contained in Clause 3 of the order dated 30 July 2019 passed by the trial Court referring the parties to arbitration, which reads as under :

“3. Parties to furnish a list of arbitrators of their choice,
at least three names.”

17. There is substance in the submission of Mr. Sabrad that the entire proceedings before the trial Court were not stayed. Moreover, Defendant No.1 had not filed an application for referring the parties to arbitration till the said order dated 30 July 2019 was passed by the trial Court. Evidently, for a period of almost two years of the service of the summons, Defendant No.1 did

not file written statement.

18. Even if the Court were to proceed on the premise that the said period for which Writ Petition preferred by the Plaintiffs was subjudice before this Court may be eschewed from consideration, yet, the subsequent developments and the progress in the suit, especially, the conduct on the part of Defendant No.1, deserve to be taken into account.

19. To begin with, it is necessary to note that while allowing WP No.9453 of 2019, this Court had recorded a prima facie view that Defendant No.1 – Respondent No.1 therein, had defrauded both the Plaintiffs as well as the subsequent purchasers i.e. Defendant Nos.2 to 33. Taking note of the role of Defendant No.1, this Court, while directing the trial Court to conclude the trial within a period of six months, had made the following observations :

“6. In view of the above observations and findings, the impugned order dated 30.07.2019 is unsustainable and therefore quashed and set aside. Resultantly, Writ Petition stands allowed with a direction to the learned Trial Court to dispose of SCS No.285 of 2017 as expeditiously as possible and in any event within a period of six months from today.

7. Needless to note that all contentions of parties are expressly kept open. Respondent No.1 is warned by this Court to ensure that he shall not seek unnecessary adjournments in the trial Court and any adjournments sought by Respondent No.1 shall be denied by the trial Court unless they are utmost necessary in case of any emergency or exigency.

8. Considering the distress of the flat purchasers in the present case, learned Trial Court is requested by this Court to

ensure that the Suit is disposed of as expeditiously as possible and if so required, the learned Trial Court is directed by this Court to undertake hearing of the suit proceedings on a day to day basis to ensure that there is finality to the list between the parties at the earliest.

9. I am informed that the suit proceeding before the learned Trial Court is slated on 23.04.2024. Parties are directed to a server copy of this order before the learned Trial Court. Learned Trial Court shall take cognizance of this order and determine the schedule of hearing in the suit proceedings by giving directions as per its discretion and convenience.”

20. Having noted the nature of the dispute and the role attributed to the Defendant No.1 therein, this Court was cautious and careful to warn Defendant No.1 from seeking adjournments. The subsequent progress in the trial, and, especially the conduct of Defendant No.1 need to be appraised through the aforesaid prism.

21. The material on record, especially the Roznama of the suit proceedings, indicates that the Defendant No.1 did not file an application for permission to file written statement, like other Defendants; which were allowed by the trial Court. Instead, Defendant No.1 changed Advocates on multiple occasions. Eventually, on 18 July 2024, an application to refer the parties to arbitration came to be filed. Though the said application was rejected on 5 August 2024 itself, no steps were taken to file an application seeking condonation of delay in filing the written statement. Advocates were

changed and the husband of the Defendant No.1 sought to defend the suit on the strength of the power of attorney. It was on 17 December 2024, Defendant No.1 filed an application for condonation of delay in filing the written statement. In the intervening period, multiple applications filed by Defendant No.1 seeking adjournments came to be rejected. An order of 'no cross-examination' was also passed against Defendant No.1.

22. The manner in which Defendant No.1 proceeded to defend the suit, despite being warned by this Court from seeking adjournments, leads to a justifiable inference that Defendant No.1 resorted to litigative stratagem to delay the disposal of the suit, despite being fully conscious of the fact that the suit was time bound by the order of this Court and critical observations were made against her in the said Writ Petition.

23. Undoubtedly, the provisions contained in Order VIII Rule 1 have been construed to be directory. However, the provisions cannot be construed in such a manner as to defeat the very object of introducing the time frame for filing the written statement. It was incumbent upon Defendant No.1 to satisfy the Court as to why she could not file Written Statement initially within two years, before the parties were referred to arbitration, and, more importantly, after this Court allowed Writ Petition No.9453 of 2019 and specifically put the Defendant No.1 to notice that she was not to seek adjournments and derail the trial.

24. The only explanation which was sought to be offered in the application for condonation of delay was that Defendant No.1 is a mother of two children; one of whom is an infant, and, therefore, some times due to unavoidable circumstances she was unable to take rigorous follow-up.

25. The cause ascribed by Defendant No.1 for not filing the Written Statement is wholly unsustainable. A useful reference, in this context, can be made to a three Judge Bench decision of the Supreme Court in the case of R.N.Jadi & Bros. V/s. Subhashchandra⁴, wherein the approach of the Court in permitting the defendant to file written statement, beyond the stipulated period, was enunciated in the following words :

“14. It is true that procedure is the handmaid of justice. The court must always be anxious to do justice and to prevent victories by way of technical knockouts. But how far that concept can be stretched in the context of the amendments brought to the Code and in the light of the mischief that was sought to be averted is a question that has to be seriously considered. I am conscious that I was a party to the decision in Kailash Vs. Nanhku⁵ which held that the provision was directory and not mandatory. But there could be situations where even a procedural provisional could be construed as mandatory, no doubt retaining a power in the Court, in an appropriate case, to exercise a jurisdiction to take out the rigour of that provision or to mitigate genuine hardship. It was in that contest that in Kailash Vs. Nanhku (supra) it was stated that the extension of time beyond 90 days was not automatic and that the court, for reasons to be recorded, had to be satisfied that there was sufficient justification for departing from the time-limit fixed by the Code and

4 (2007) 6 SCC 420

5 (2005) 4 SCC 480

the power inhering in the court in terms of Section 148 of the Code. Kailash is no authority for receiving written statement, after the expiry of the period permitted by law, in a routine manner.

15. A dispensation that makes Order 8 Rule 1 directory, leaving it to the courts to extend the time indiscriminately would tend to defeat the object sought to be achieved by the amendments to the Code. It is, therefore, necessary to emphasise that the grant of extension of time beyond 30 days is not automatic, that it should be exercised with caution and for adequate reasons and that an extension of time beyond 90 days of the service of summons must be granted only based on a clear satisfaction of the justification for granting such extension, the court being conscious of the fact that even the power of the court for extension inhering in Section 148 of the Code, has also been restricted by the legislature. It would be proper to encourage the belief in litigants that the imperative of Order 8 Rule 1 must be adhered to and that only in rare and exceptional case, will the breach thereof will be condoned. Such an approach by courts alone can carry forward the legislative intent of avoiding delays or at least in curtailing the delays in the disposal of suits filed in courts. The lament of Lord Denning in *Allen Vs. Sir Alfred McAlpine & Sons Ltd.*⁶ that law's delay have been intolerable and last so long as to turn justice sour, is true of our legal system as well. Should that state of affairs continue for all times?"

(emphasis supplied)

26. In the case of Mohammed Yusuf (supra), on which reliance was placed by Mr. Sabrad, the Supreme Court after following the aforesaid decision, held that the High Court had committed an error in permitting the defendant to file written statement when the defendant therein had not assigned any justifiable

⁶ (1968) 2 QB 229

reason. The Supreme Court held that the jurisdiction of the High Court under Articles 226 and 227 of the Constitution of India is limited. It could have set aside the orders passed by the learned Trial Court and the Revisional Court only on limited grounds, namely, illegality, irrationality and procedural impropriety.

27. The submissions of Mr. Kirpekar that the delay on the part of Defendant No.1 was not intentional and the Defendant No.1 would suffer grave prejudice if she is not permitted to file written statement, do not merit acceptance. The material on record shows to the contrary. It appears that the Defendant No.1 resorted to dilatory tactics and filed application for permission to file written statement after the evidence of the Plaintiffs was over and the Defendants' evidence commenced, post resorting to various litigative stratagum.

28. Reliance by Mr. Kirpekar on the judgment of the Supreme Court in the case of Collector, Land Acquisition, Anantnag and Anr. (supra), is completely misplaced.

29. Therefore, in my considered view, Defendant No.1's deliberate inaction and negligence, bordering on stubborn litigative attitude driven by a desire to delay the disposal of the suit, were only at the own peril of Defendant No.1.

30. In the totality of the circumstances, Defendant No.1 does not deserve the exercise of jurisdiction. This Court, therefore, does not find any infirmity

in the impugned order so as to warrant interference in exercise of supervisory jurisdiction.

31. The Writ Petition stands dismissed.

32. Rule discharged.

No costs.

(N.J.JAMADAR, J.)