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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7258 OF 2025**

Vandana Jagdish Ahuja and Anr ... Petitioners

vs.

Priyanka Mahendra Bansal and Ors ... Respondents

**WITH
WRIT PETITION NO. 7260 OF 2025**

Vandana Jagdish Ahuja and Anr ... Petitioners

vs.

M/s. Mahandra Brijmohan Bansal (HUF)
through its constituted attorney P.M.

Bansal and Ors ... Respondents

Mr. Sahil Mahajan for Petitioners

Mr. Anand R. Kandoi for Respondent No.1.

CORAM : GAURI GODSE, J.

DATED : 9th JULY 2025

ORDER:

1. Learned counsel appearing for respondent no.1, the original plaintiff, waives notice for final disposal of the petitions. These petitions are filed by the original defendant nos. 3 and 5 in the suit. By the impugned order, their applications for setting aside the order for proceeding with the suits ex parte are dismissed.

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2. Both suits are filed by respondent no.1 for recovering the amount, which, according to the plaintiff, was agreed to be paid through a cheque issued by defendant no.1. The suit summons was served. Since none appeared, the suit was directed to be proceeded ex parte by order dated 30th November 2022. Defendant no.1 is the partnership firm. Defendant nos. 2 to 5 are family members. Defendant no.2 is the father of defendant no.4, and defendant no.3 is the mother of defendant no.4. Defendant no. 5 is the wife of defendant no.4. The plaintiff claims that defendant nos. 2 to 5 are partners of defendant no. 1, which is a family partnership firm. However, the petitioners, i.e defendant nos. 3 and 5 contended that only defendant nos. 2 and 4, are the partners of defendant no.1 firm and defendant nos. 3 and 5 are not concerned with the partnership firm or its business.

3. The petitioners filed the notice of motion on 12th July 2023, praying for setting aside the ex parte order dated 30th November 2022. The petitioners prayed for condonation of delay in filing the motion, setting aside the ex parte order dated 30th November 2022, and for leave to file their appearance and also prayed for leave to defend.

4. The plaintiff opposed this application. By the impugned

order, this application is dismissed. Learned counsel for the petitioners submits that the suit summons was served upon defendant no.3. Defendant no. 5 claims that the summons was not served upon her. However, defendant no. 3 has accepted the summons on her behalf. Learned counsel for the petitioners further submits that defendant nos. 2 and 4 have been declared insolvent. He submits that various proceedings have been initiated against the defendants. Learned counsel for the petitioners submitted that the petitioners had intimated their advocate, who appears in various matters about the present suit; however, they were unable to take steps and could not enquire about the status of the present suit.

5. Learned counsel for the petitioners submits that the petitioners learnt about the status of this suit from their advocate, who represents them in other matters. He submits that their advocate, after checking the online status of the other matters, became aware of the present suit. Accordingly, certified copies of the plaint and orders were obtained on 21st January 2023, and immediate steps were taken to file a notice of motion for setting aside the ex parte order.

6. Learned counsel for the petitioners relies upon the order

passed in the criminal revision application in the proceedings initiated by the plaintiff against all the defendants under Section 138 of the Negotiable Instruments Act. He submits that the criminal revision application filed by these petitioners before the sessions court for recalling the order issuing process was allowed. He submits that in the order passed allowing the criminal revision application, specific findings were recorded that these petitioners are not the partners of the defendant No. 1 partnership firm.

7. Learned counsel for the petitioners, therefore, submits that the petitioners are not concerned with the partnership firm, and therefore, they would be entitled to defend the suit on that ground. He thus submits that there is no negligence on the part of the petitioners and, as advised by their advocate, who appears in other matters, immediate steps are taken to file an application for setting aside the ex parte order. To support his submissions, learned counsel for the petitioners relies upon the decision of the Hon'ble Apex Court in the cases of *N. Balkrishnan Vs. M. Krishnamurthy*¹ and *Collector Land Acquisition Anantnag and Anr V/s Mst. Katiji and Ors*². Learned counsel for the petitioners

1 (1998) 7 SCC 123

2 (1987) 2SCC 107

submits that it is a well-established legal principle that a liberal approach should be adopted for condonation of delay when refusal to condone delay would destroy the rights of the parties to defend the suit.

8. Learned counsel for respondent no.1 – the original plaintiff supports the impugned order. He submits that vague reasons are given in the affidavit-in-support of the notice of motion. He submits that, although served with the summons, the petitioners failed to take steps within time to appear in the suit. He submits that making allegations against the advocate cannot be a ground to condone delay and set aside the ex parte order. He submits that the explanation in the affidavit-in-support shows that vague grounds are raised for condonation of delay by making allegations against their advocate. He, thus, submits that the reasons given in the affidavit-in-support cannot be accepted as a genuine reason to condone the delay of more than 328 days.

9. To support his submissions, the allegations made against the advocate cannot be accepted as a ground for condonation of delay, learned counsel for respondent no.1 relies upon the decision of the Hon'ble Apex Court in the case of ***Pundlik Jalam Patil (Dead) by Lrs Vs. Executive Engineer, Jalgaon Medium***

*Project and Anr*³. He also relies upon the decision of the Allahabad High Court in the case of *Jagdish and Others Vs. State of U.P. and Others*⁴. Learned counsel for the petitioners relies upon the decision of this court in the case of *Kanta alias Shanti w/o.S ubhash Karkale Vs. Manjulabai alias Kholki w/o Haribhau Tarare and Anr*⁵.

10. I have perused the papers of the writ petitions. The suit is filed for the recovery of the amount against the defendants. The plaintiff contended that the defendants are liable to make payment of the amount which they have agreed to pay by issuing a cheque in the name of defendant no.1. The suit is therefore filed for recovering the cheque amount. The suit is filed sometime in April 2022. In the notice of motion, the petitioners accepted receiving suit summons through defendant no.3. The petitioners contended in affidavit-in-support that there is no privity of contract between the plaintiff and them and thus, they are wrongly joined as party defendants in the suit. The petitioners rely upon orders passed in the criminal proceedings to support their submission that they are not concerned with defendant no.1's partnership firm and they are wrongly joined as defendants.

3 (2008) 17 SCC 448

4 2024 SCC OnLine All 1480

5 [2020(1) Mh.L.J 918

11. The learned counsel for the petitioners contended that the petitioner no.1 had received suit summons; however, it was not intimated to the petitioner no.2. They contended that various proceedings were filed against these defendants in various courts, and thus, defendant no.3, i.e. petitioner no.1, forgot to find out the status of the present suit. Learned counsel for the petitioners further contended that, as advised by their advocate, who appears in another matter, they have taken immediate steps to take certified copies of the proceedings and file an application for setting aside the ex-parte order.

12. The plaintiff opposed the notice of motion by filing a reply. The plaintiff contended that there is negligence on the part of the petitioners and by making false allegations against the advocate, the petitioners have prayed for condonation of the delay. The plaintiff thus opposed the notice of motion on the ground that, for want of justifiable reasons, the inordinate delay of over 328 days cannot be condoned. The plaintiff also contended that she had already filed an affidavit of evidence, and the suit had proceeded further.

13. The Learned Judge of the City Civil Court has dismissed the notice of motion mainly on the ground that the petitioners

have made allegations against their advocate. It is observed in the impugned order that though defendant no.3 accepted the summons for herself and on behalf of defendant no. 5, no satisfactory reason is forthcoming for not appearing in the suit. Learned Judge further observed that negligence on the part of the parties cannot be shifted on the advocate by making allegations against the advocate. Thus, by observing that there is no satisfactory explanation for delay, the notice of motion is dismissed.

14. In the affidavit-in-support of the notice of motion, the petitioners have accepted the receipt of the summons. The petitioners have contended to have given their advocate the papers of the summons; however, there are no allegations against the advocate. It is the petitioners' case that various cases are pending against the defendants in various courts; hence, though defendant no. 3 had received the summons they forgot to find out the status of the matter from their advocate. The petitioners have thus relied upon the advice given by another advocate who appears for them in another proceeding for filing the present application for setting aside the ex parte order.

15. Thus, from the plain reading of the affidavit-in-support, it

does not appear that the petitioners have made any allegations against their advocate. The petitioners have acknowledged that, due to various proceedings pending against all the defendants in various courts, they were unable to take steps to defend the present suit. The order in the insolvency petition supports the petitioners' contentions that there were various proceedings pending, and defendant nos. 2 and 4 are declared insolvent. The order passed in criminal proceedings relied upon by the petitioners supports their contentions that the order issuing process against them is set aside on the ground that they are not the partners of the defendant no.1 firm. Thus, supporting documents relied upon by the petitioners reveal that various proceedings are pending against the defendants and the petitioners are not concerned with defendant no.1 as partners. Considering the grounds raised in the affidavit-in-support, the reasons given for condonation of delay cannot be termed as unbelievable. Documents support the reasons given and can be accepted as reasonable ground for justifying the delay and non-appearance in the suit, though the summons was served upon defendant no.3.

16. In the decision of the Hon'ble Apex Court, in the case of ***N. Balkrishan***, the legal principles for deciding an application for

condonation of delay are settled. It is held by the Hon'ble Apex Court in paragraphs 12 and 13 as follows:

*“12. A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delaying approaching the court is always deliberate. This Court has held that the words “sufficient cause” under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide **Shakuntala Devi Jain V. Kuntal Kumar**⁶ and **State of W.B. Vs. Administrator Howrah Municipality**⁷.*

13. It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. While condoning the delay, the court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant, the court shall

6 AIR 1969 SC 575

7 (1972) 1 SCC 366

compensate the opposite party for his loss.”

17. The Hon'ble Apex Court in the case of ***Collector Land Acquisition*** held that refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause justice to be defeated. The Hon'ble Apex Court further held that a justifiable approach needs to be adopted while deciding the application for condonation of delay. In the decisions relied upon by the learned counsel for respondent no.1, the Hon'ble Apex Court in the case of ***Pundlik Jalam Patil***, held that when discretionary jurisdiction is not being exercised judicially, and the court having found that incorrect submissions were made regarding knowledge of the order subject matter of challenge, the court ought to have refused to exercise its discretionary jurisdiction. In the decision of ***Kanta alias Shanti w/o Subhash Karkale***, relied upon by the learned counsel for respondent no.1, this court held that the allegations made against the advocate cannot be accepted as a ground for condonation of delay. The Allahabad High Court takes a similar view in the case of ***Jagdish and Others***.

18. However, in the facts of the present case, as discussed in the preceding paragraphs, the petitioners have raised grounds by accepting responsibility for not inquiring with the advocate

regarding the status of the suit. The reasons stated in the affidavit-in-support do not reveal any allegations made against the advocate. The petitioners have accepted that they were unable to take steps in the present case due to various proceedings pending against the defendants in various courts. Thus, in view of the grounds raised in affidavit-in-support of the notice of motion, the reasons recorded in the impugned order are not sustainable.

19. I do not find that the affidavit-in-support raises grounds for condonation of delay by making any allegations against the advocate. Thus, the learned trial Judge has not correctly appreciated the reasons stated in the affidavit-in-support of the notice of motion. Considering the grounds raised in the notice of motion, the reasons are justifiable and acceptable. Hence, in the facts and circumstances of the present case, the legal principles settled in the decisions relied upon by the learned counsel for the petitioners squarely apply in support of their submissions. Thus, notice of motion for condonation of delay and setting aside ex parte order deserves to be allowed. However, considering the delay in applying for setting aside the ex-parte order, the petitioners shall pay costs to the plaintiff for compensating for the delay.

20. If the petitioners comply with the directions issued by this order and file their appearance, the plaintiff shall be at liberty to serve a summons for judgment as contemplated under Rule (4) of Order XXXVII of the Code of Civil Procedure, 1908 ('CPC').

21. Hence, for the reasons recorded above, the petition is allowed by passing the following order:

IN WRIT PETITION NO. 7258 OF 2025

I) Order dated 1st March 2025, in Notice of Motion No. 2366 of 2023 in Summary Suit No. 202 of 2022 is quashed and set aside, and the notice of motion is allowed.

II) Ex-parte order dated 30th November 2022 is quashed and set aside, subject to payment of costs of Rs. 25,000/- to the plaintiff.

III) The costs shall be paid within four weeks from today.

IV) After compliance with the payment of the cost, the petitioners are permitted to file their appearance in the suit.

V) The plaintiff is at liberty to serve a summons for judgment as contemplated under Rule (4) of Order XXXVII of the CPC.

VI) It is clarified that the suit proceedings shall be decided on its own merits, uninfluenced by the observations made in this order.

IN WRIT PETITION NO. 7260 OF 2025

- I) Order dated 1st March 2025, in Notice of Motion No. 2367 of 2023 in Summary Suit No. 203 of 2022 is quashed and set aside, and the notice of motion is allowed.
- II) Ex-parte order dated 30th November 2022 is quashed and set aside, subject to payment of costs of Rs. 25,000/- to the plaintiff.
- III) The costs shall be paid within four weeks from today.
- IV) After compliance with the payment of the cost, the petitioners are permitted to file their appearance in the suit.
- V) The plaintiff is at liberty to serve a summons for judgment as contemplated under Rule (4) of Order XXXVII of the CPC.
- VI) It is clarified that the suit proceedings shall be decided on its own merits, uninfluenced by the observations made in this order.

(GAURI GODSE, J.)