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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**WRIT PETITION NO. 9425 OF 2025
WITH
INTERIM APPLICATION NO. 9283 OF 2025**

Neminath Developers Thrs. ItsPetitioners
Partner Jayesh Ramniklal Dedhia
and anr

Vs.

Kairavy Jimmy SavlaRespondent

Mr. Pariket Shah for the petitioners
Mr. Amit Kanani, i/b Kanani and Co. for the respondent

CORAM : GAURI GODSE, J.

DATE : 21st JULY 2025

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ORDER:

1. This petition is taken up for final disposal at admission stage.
2. Learned counsel for the respondent waives notice for final disposal.
3. This petition is filed by the defendants to challenge the order dismissing the Notice of Motion for condonation of delay of 23

days in filing an affidavit seeking leave to defend. The respondent has filed the summary suit for recovering the amount of Rs. 5 Lakhs based on promissory note dated 4th December 2017. Though the defendants were served with summons for judgment, leave to defend was not sought within time. Hence, the Notice of Motion was filed to condone the delay. This Motion was opposed by the respondent on the ground that no substantial defence is disclosed for seeking leave to defend. The Notice of Motion is dismissed by the impugned order.

4. Learned counsel for the petitioners submits that defendant no. 2 who is the partner of defendant no. 1 was not available in Mumbai till 18th August 2023. Hence, for want of proper instructions, affidavit for leave to defend could not be filed within time. He submits that the delay in applying for leave to defend is explained by the defendants in the supporting affidavit of the Notice of Motion. He submits that the plaintiff can be compensated by a reasonable cost for the delay on the part of the defendants in applying for leave to defend.

5. Learned counsel for the respondent submits that vague

reasons are given in the supporting affidavit for condoning the delay. He submits that though served with the summons for judgment, the defendants failed to file affidavit for leave to defend within time. He submits that neither the affidavit of leave to defend was filed alongwith motion nor the affidavit in support to the Notice of Motion discloses any substantial defence. He, therefore, submits that no purpose would be served by condoning the delay in applying for the leave to defend. He submits that the respondent has already filed his evidence affidavit and the suit has proceeded.

6. I have perused papers of the petition. Receipt of the summons for judgment on 11th August 2023 is not in dispute. The affidavit in support of the Notice of Motion discloses the reasons for the delay on the ground that due to non availability of the partner of defendant no. 1, affidavit for leave to defend could not be filed within time. The delay is of 23 days. Considering the reasons given in the supporting affidavit regarding explanation for the delay, time to file leave to defend can be extended by compensating the plaintiff for the delay by imposing the cost upon

the defendants. A perusal of the affidavit in support of the Notice of Motion reveals that the defendants have raised the objection to the promissory note relied upon by the plaintiff and the defendants' contentions are briefly stated in the supporting affidavit. Thus, considering the affidavit in support to the Notice of Motion, I do not see any reason to refuse to condone the delay of 23 days. The delay can be compensated by imposing cost upon the defendants.

7. For the reasons recorded above, the petition is allowed by passing the following order:

ORDER

I. The impugned order dated 24th March 2025 passed by Notice of Motion No. 1658 of 2024 in Summary Suit No. 18 of 2022 by City Civil Court and Additional Session Judge, Borivali Division, Dindoshi, Mumbai is quashed and set aside.

II. Notice of Motion No. 1658 of 2024 is allowed subject to payment of cost of Rs. 25,000/- to be paid to the respondent-plaintiff.

III. The cost shall be directly paid in the plaintiff's bank account within two weeks from today.

IV. If the amount of cost is paid, the petitioners (defendants) shall be at liberty to file affidavit-in-reply to the summons for judgment on the next date in the City Civil Court.

V. It is clarified that the payment of cost as directed by this Court is condition precedent for allowing Notice of Motion No. 1658 of 2024. It is therefore clarified that if the cost is not paid within the time granted, this Writ Petition will stand dismissed without further reference to the Court.

8. Writ Petition is allowed in the aforesaid terms.

9. In view of disposal of the Writ Petition, Interim Application is disposed of as infructuous.

[GAURI GODSE, J.]