

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11041 OF 2025

Santosh Kumar Das through POA ... Petitioner
V/s.

Centaur Pharmaceutical Pvt. Ltd. ... Respondent
Through S.M. Haldankar

Mr. Satish Upadhyay (through VC), for the petitioner.

Mr. Jayesh Sapra, for the respondent.

CORAM : N.J. JAMADAR, J.

DATE : 16th SEPTEMBER 2025.

ORAL ORDER:

1. Heard the learned counsel for the petitioner.
2. The challenge in this petition is to an order dated 10th October 2024 passed by the learned Judge, City Civil Court, whereby Notice of Motion taken out by the defendant to set aside the order dated 4th July 2023, condone the delay in filing the written statement and take the written statement on record, came to be rejected.
3. From the perusal of the material on record, it appears that the writ of summons was served on the defendant/petitioner on 25th August 2022. The advocate for the defendant filed Vakalatnama on 29th September 2022.
4. The defendant did not file the written statement within the maximum period of 120 days. Defendant took out the notice of motion

seeking condonation of delay, if any, in filing the written statement and permission to file the written statement, asserting, inter alia, that the complete copy of the plaint was not served on the defendant and, therefore, the written statement could not be filed. A complete copy of the plaint was served by the advocate for the plaintiff along with a covering letter dated 16th February 2023.

5. The learned Judge, City Civil Court was of the view that the writ of summons was duly served on the defendant on 25th August 2022. Appearance was entered on behalf of the defendant on 29th September 2022. At no point of time a grievance was made that a complete copy of the plaint was not served on the defendant. Therefore, on the strength of the letter dated 16th February 2023, addressed by the advocate for the plaintiff to the advocate for the defendant, it cannot be said that the defendant was not served with the complete copy of the plaint at an earlier point of time.

6. Learned counsel for the petitioner submitted that the observations recorded by the learned Judge in Para No. 5 of the impugned order are factually incorrect. An endeavour was made to take the Court through the entries in the Roznama of the suit to buttress the case that the defendant had in fact sought a copy of the complete plaint.

7. I have perused the copy of the Roznama. It does not record that at any point of time the defendant had raised a grievance that a copy of the complete plaint was not served on the defendant. The observations in Para No. 5 of the impugned order encapsulate the sequence of events and also spell out the reasons which weighed with

the learned Judge, City Civil Court. They read as under.

“5. The defendant filed letter dated 16/02/2023 given by the advocate for the plaintiff to his advocate stating that the copy of the plaint in the suit accompanying the said letter is and by way of service upon him. It was received by advocate for the defendant on 23/02/2023. However most important aspect is that undisputedly the defendant was served with writ of summons through RPAD on 25/08/2022. The service affidavit filed by the plaintiff supported by postal acknowledgment. Thereafter, the defendant advocate filed his vakalatnama in the suit on 29/09/2022. Neither on that day nor any subsequent dates the defendant or his advocate raised grievance that the defendant has not received the documents in writ of summons. The defendant not sought any direction from the court in this regard when he attended the matter on some of dates. On the basis of letter by the plaintiff advocate to the advocate of the defendant which occurred out of the court record, it cannot be said that the defendant first time served by the plaintiff vide letter dt.16/02/2023. On the contrary, it prima facie appears that the defendant was served on 25/08/2022. Thereafter, no grievance was raised regarding the incomplete service. Only because the plaintiff advocate again given the copy of the plaint to the defendant advocate, the written. There is delay more than 120 days from the date of service of writ of summons. The suit being commercial suit delay more than 120 days cannot be condoned. On these grounds present notice of motion is liable to be dismissed.”

7. The aforesaid observations indicate that, the fact that writ of summons was duly served on defendant on 25th August 2022 is incontrovertible. It is not the case that the defendant did not participate in the proceedings before the learned Judge, City Civil Court. Appearance was entered on 29th September 2022. There is no

material to indicate that the defendant had raised a grievance before the expiry of 120 days from the date of service writ of summons that complete set of plaint was not served on the defendant.

8. In this view of the matter, having regard to the peremptory nature of the provisions contained in Order V Rule 1 and Order VIII Rule 1 of the Code of Civil Procedure, as amended by the Commercial Courts Act, 2015, the time to file the written statement cannot be extended beyond the period of 120 days.

9. Therefore, this Court does not find any infirmity in the impugned order.

10. The petition thus stands dismissed.

(N.J. JAMADAR, J)