

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11905 OF 2025

Shree Siddhivinayak Classic ... Petitioner
Construction Pvt. Ltd.

V/s.

M/s Gautam Silk Mills through its ... Respondent
prop. Suresh G. Kumar

Mr. Ishani Khanwilkar with Samit Shukla, Shivani Khanwilkar, Vidhi Goradia and Rahul Theckedath I.by Trilegal, for the petitioner.

Mr. Mohan B. Jadhav, 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 2nd January 2025 passed by the learned Judge, City Civil Court whereby Notice of Motion No. 397 of 2024 taken out by the petitioner to dismiss the suit for non-service of the writ of summons came to be rejected.
3. The learned Judge was of the view that the defendant-petitioner has been served with the copy of the plaint on 29th June 2022. Thus, the defendant was not precluded from drafting the written statement for filing the same on the appointed date. The learned Judge also took note of the fact that the counsel for the plaintiff undertook to serve a writ of summons on the defendant in the prescribed format.

4. Learned counsel for the petitioner submitted that the writ of summons has yet not been served. Therefore, the time to file written statement, cannot be said to have commenced.

5. Though there is a lapse on the part of the plaintiff in serving the writ of summons on the defendant, having regard to the nature of the impugned order, it does not warrant interference in exercise of the supervisory jurisdiction. The cause of justice would be advanced if the respondent-plaintiff is directed to serve a writ of summons on the defendant-petitioner, within a period of four weeks from today.

6. The time to file the written statement will start from the date of service of the writ of summons.

7. Since writ of summons has not been served on the petitioner-defendant despite an undertaking given before the City Court till date, in the event of failure of respondent-plaintiff to serve the writ of summons on the defendant-petitioner within a period of four weeks, the suit itself shall stand dismissed without further reference to the Court.

8. Subject to aforesaid clarification, the petition stands disposed.

(N.J. JAMADAR, J)