

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 14829 OF 2025

Priti Rajendra Chand

...Petitioner

Versus

1. Ajaykant R. Ruia

2. Miss. Ujjavala R. Ruia

3. M/s. Presidency Centre,

...Respondents

Mr. Mayur Agarwal, a/w Dharmesh Pandya, i/b Ashwin
Pandya & Associates, for the Petitioner.

Ms. Gauravi Chaoudhari, i/b Shivali Khadke and Sangita
Mistry, for Respondent No.1.

SANTOSH
SUBHASH
KULKARNI

Digitally signed by
SANTOSH SUBHASH
KULKARNI
Date: 2025.11.21
19:36:14 +0530

CORAM: N. J. JAMADAR, J.

DATED: 19th NOVEMBER, 2025

ORDER:-

1. Rule. Rule made returnable forthwith and, with the consent of the learned Counsel for the parties, heard finally.

2. This petition under Article 227 of the Constitution of India assails the legality, propriety and correctness of an order dated 30th July, 2025 passed by the learned Judge, City Civil Court, Greater Bombay, in Notice of Motion No.975/2025, whereby the prayer of the petitioner - defendant No.3B to condone the delay in filing the written statement on behalf defendant Nos.3A to 3D, came to be rejected.

3. The respondent Nos.1 and 2 had initially instituted the suit before the High Court being Suit No.3668/1990. Defendant No.3 had filed the written statement. Defendant No.3 passed away on 16th April, 2019. By an order dated 26th February, 2021, in IA/1063/2020, the petitioner and respondent Nos.4, 6 and 7 – defendant Nos.3A to 3D were permitted to be brought on record. Defendant Nos.3A to 3D were granted liberty to file written statement appropriate to their character as legal representatives of deceased defendant No.3, within a period of six weeks of being served with the copy of the amended plaint.

4. In the meanwhile, with the enhancement in the pecuniary jurisdiction of the City Civil Court, Bombay, the suit came to be transferred to the City Civil Court.

5. Before the City Civil Court, the petitioner – defendant No.3B took out the Notice of Motion seeking condonation of delay in filing the written statement and to take the written statement of defendant Nos.3A to 3D, on record. It was asserted that, the amended copy of the plaint was served on defendant Nos.3A to 3D on 18th March, 2021 and time granted by the High Court to file the written statement expired on 29th April, 2021. However, defendant Nos.3A to 3D could not file the written statement as they were not fully acquainted with the dispute.

Original defendant No.3 was defending the suit. Defendant Nos.3A to 3D, thus, found it difficult to grasp the matter in dispute. On account of Covid-19 Pandemic, defendant Nos.3A to 3D also faced difficulty in co-ordinating with their Advocates. Thus, there was delay of 1350 days in filing the written statement.

6. The Notice of Motion was resisted by the plaintiffs by filing an affidavit-in-reply. It was contended that the delay was inordinate and defendant Nos.3A to 3D failed to make out any sufficient cause for condonation of such huge delay.

7. By the impugned order, the learned Judge, City Civil Court, rejected the Notice of Motion opining, *inter alia*, that no case was made out to condone the delay in filing the written statement.

8. Mr. Mayur Agarwal, the learned Counsel for the petitioner, submitted that the learned Judge, City Civil Court, took a very strict and hyper-technical view of the matter. The learned Judge lost sight of the well settled principle that an application for condonation of delay must receive liberal consideration. Moreover, the defendant Nos.3A to 3D were proposing to file written statement in their capacity as the legal representatives of deceased defendant No.3. If viewed in that context, especially

in the light of the exigency of the situation which arose on account of Covid-19 Pandemic and also the situation in life of defendant Nos.3A to 3D, who are of advanced age, the learned Judge ought to have adopted a liberal approach. No prejudice is likely to be caused to the plaintiffs if defendant Nos.3A to 3D are permitted to file the written statement. Reliance was placed by Mr. Agarwal on the judgment of the Supreme Court in the case of *Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and others*¹.

9. Per contra, Ms. Choudhary, the learned Counsel for the respondents – plaintiffs, would submit that no case is made out for interference with the discretion exercised by the learned Judge, City Civil Court, in exercise of supervisory writ jurisdiction. Taking the Court through the affidavit in support of the Notice of Motion, Ms. Choudhary would submit that, vague and general statements were made therein to account for a huge delay of 1350 days. In the absence of any justifiable reason, the learned Judge, City Civil Court, committed no error in rejecting the Notice of Motion. Such a discretionary order ought not be interfered with. Reliance was placed by Ms. Choudhary on the judgment of the Supreme Court in the case

¹ (2013) 12 Supreme Court Cases 649.

of *Ramakant Ambalal Choksi vs. Harish Ambalal Choksi and ors.*².

10. I have given given careful consideration to the the submissions canvassed across the bar. To begin with, it is necessary to note that the time to file written statement was fixed by this Court by an order dated dated 26th February, 2021, in IA/1063/2020. Evidently, no written statement was filed till the suit remained on the file of this Court. After a delay of 1350 days, defendant No.3B alone took out the Notice of Motion to condone the delay. Looked from any perspective, a delay of 1350 days in filing the written statement appears huge and inordinate.

11. It is true, ordinarily the Courts lean in favour of the condonation of delay. The Courts are persuaded to exercise the discretion to condone the delay so as to ensure that the procedure, which is handmaid of justice, does not score a march over substantive justice. Thus, to advance the cause of substantive justice, the causes ascribed for the delay are construed liberally. However, a party seeking the condonation of delay is enjoined to demonstrate that it was prevented by a cause and the delay was neither intentional nor *mala fide*.

2 Civil Appeal No.13001/2024 dtd.22/11/2024.

12. If the delay is huge, like the case at hand, it cannot be said that the length of delay does not matter at all. Undoubtedly, the cause ascribed for the delay weighs more than the length of the delay. However, in a case where the cause does not appear to be sufficient, delay cannot be condoned by resorting to the principle of substantive justice, especially when the delay is inordinate.

13. A profitable reference in this context can be made to a recent judgment of the Supreme Court in the case of *Thirunagalingam v. Lingeswaran*³. The Supreme Court has cautioned against condonation of huge delay as an act of generosity. The observations in paragraphs 31 and 32 read as under.

“31. It is a well-settled law that while considering the plea for condonation of delay, the first and foremost duty of the court is to first ascertain the *bona fides* of the explanation offered by the party seeking condonation rather than starting with the merits of the main matter. Only when sufficient cause or reasons given for the delay by the litigant and the opposition of the other side is equally balanced or stand on equal footing, the court may consider the merits of the main matter for the purpose of condoning the delay.

32. Further, this Court has repeatedly emphasised in several cases that delay should not be condoned merely as an act of generosity. The pursuit of substantial justice must not come at the cost of causing prejudice to the opposing party. In the present case, the respondents/defendants have failed to demonstrate reasonable grounds of delay in pursuing the matter, and this crucial requirement for condoning the delay remains unmet.”

(emphasis supplied)

14. In the case of *H. Guruswamy and others vs. A. Krishnaiah since deceased by LR(s)*⁴, the Supreme Court again emphasised that the concepts of, “liberal approach”, and “substantial justice” should not be employed to frustrate the law of limitation. It was enunciated that the length of the delay is definitely a relevant matter which the Court must take into consideration while deciding whether the delay should be condoned or not. The observations of the Supreme Court in paragraphs 13 to 17 are instructive and hence, extracted below:

“13. We are at our wits end to understand why the High Court overlooked all the aforesaid aspects. What was the good reason for the High Court to ignore all this? Time and again, the Supreme Court has reminded the District judiciary as well the High courts that the concepts such as “liberal approach”, “Justice oriented approach”, “substantial justice” should not be employed to frustrate or jettison the substantial law of limitation.

14. We are constrained to observe that the High Court has exhibited complete absence of judicial conscience and restraints, which a judge is expected to maintain while adjudicating a lis between the parties.

15. The rules of limitation are not meant to destroy the rights of parties. They are meant to see that the parties do not resort to dilatory tactics but seek their remedy promptly.

16. The length of the delay is definitely a relevant matter which the court must take into consideration while considering whether the delay should be condoned or not. From the tenor of the approach of the respondents herein, it appears that they want to fix their own period of limitation for the purpose of instituting the proceedings for which law has prescribed a period of limitation. Once it is held that a party has lost his right to have the matter considered on merits because of his own inaction for a long, it cannot be presumed to be non-deliberate delay and in such circumstances of the case, he cannot be heard to plead that the substantial justice deserves to be preferred as against the technical

considerations. While considering the plea for condonation of delay, the court must not start with the merits of the main matter. The court owes a duty to first ascertain the bona fides of the explanation offered by the party seeking condonation. It is only if the sufficient cause assigned by the litigant and the opposition of the other side is equally balanced that the court may bring into aid the merits of the matter for the purpose of condoning the delay.

17. We are of the view that the question of limitation is not merely a technical consideration. The rules of limitation are based on the principles of sound public policy and principles of equity. No court should keep the 'Sword of Damocles' hanging over the head of a litigant for an indefinite period of time."

(emphasis supplied)

15. In the light of the aforesaid caution administered by the Supreme Court, reverting to the facts of the case, upon perusal of the affidavit in support of the Notice of Motion, I find substance in the submission of Ms. Choudhary that, vague and general statements were made to somehow account for the delay. The contention that the defendants found it difficult to grasp the nature of the dispute and co-ordinate with the Advocate for over four years, is as vague as possible and, even if taken at par, does not appeal to human credulity. In a sense, no cause, much less sufficient, has been ascribed by the defendants for such huge delay.

16. At any rate, since defendant No.3 had already filed the written statement, and defendant Nos.3A to 3D would not be entitled to substantially deviate from the defence raised by the

deceased defendant No.3, there would be no significant prejudice to defendant Nos.3A to 3D.

17. In the aforesaid view of the matter, in exercise of the supervisory jurisdiction, this Court does not find such infirmity in the impugned order as to warrant interference therein. The petition, therefore, deserves to be dismissed.

18. Hence, the following order:

: O R D E R :

- (i) The petition stands dismissed.
- (ii) Rule discharged.

No costs.

[N. J. JAMADAR, J.]