

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 16214 OF 2025

Sopan Bajirao Phalke and ors. ...Petitioners

Versus

Dyandeo Nanaso Sanas and ors. ...Respondents

Mr. Sushant Prabhune, for the Petitioners.

CORAM: N. J. JAMADAR, J.

DATED: 5th DECEMBER, 2025

Order:-

1. Heard the learned Counsel for the petitioners.
2. The challenge in this petition is to an order dated 27th June, 2025, whereby an application (Exhibit-52), preferred by the petitioners – defendant Nos.1, 2 14 and 15 for condonation of delay in filing the written statement, came to be rejected.
3. The petitioners were served with the suit summons on 12th August, 2022. The petitioners despite entering appearance did not file written statement within the stipulated period. Instead, the petitioners preferred an application for rejection of the plaint on 24th August, 2023. By an order dated 4th December, 2024, the said application came to be rejected. Thereupon, the petitioners preferred the application (Exhibit-52) seeking condonation of delay in filing the written statement on 11th

March, 2025 asserting, *inter alia*, that the application for rejection of the plaint came to be rejected on 4th December, 2024 and time was consumed in collecting the documents and giving instructions to the Advocate to draft the written statement.

4. The application was resisted on behalf of the plaintiff. It was asserted, *inter alia*, that there was delay of two years and eight months in filing the written statement and no satisfactory cause was ascribed for the condonation of delay.

5. By the impugned order, the learned Civil Judge was persuaded to reject the application observing, *inter alia*, that the sequence of the events manifested in the non-appearance of the defendants for a longtime, filing of an application for rejection of the plaint and filing the application seeking condonation of delay in filing the written statement belatedly, indicated that the defendants intended to prolong the matter. The defendants also failed to make out a sufficient cause to condone such huge delay.

6. Mr. Prabhune, the learned Counsel for the petitioners, made an endeavour to persuade the Court to hold that in the circumstances of the case, refusal on the part of the trial Court to grant permission to file the written statement by condoning the delay would cause grave prejudice to the defendants. It was

submitted that, since the suit has been instituted for partition and separate possession and the defendants have a good case on merits, the defendants deserve an opportunity to effectively contest the suit.

7. The facts of the case appear to be gross. The trial Court has noted that the defendants were served with the suit summons on 12th August, 2022. The written statement was required to be filed within the maximum period of 90 days thereof. Yet, without filing the written statement, the defendants file an application for rejection of the plaint. That too on 24th August, 2023, well after nine months of the expiry of the stipulated period of 90 days. Even after the rejection of the application for the rejection of the plaint on 4th December, 2024, the defendants did not promptly file an application for condonation of delay in filing the written statement. The application was eventually filed on 11th March, 2025.

8. It is true, the provisions contained in Order VIII Rule 1 have been construed to be directory and not mandatory. However, the delay cannot be condoned and the time to file the written statement cannot be extended as a matter of course and for the mere asking. It was incumbent upon the defendants to make out a sufficient cause and indicate the circumstances

which prevented the defendants from filing the written statement. As noted above, the defendants did not file the written statement for over two years and eight months after the service of the summons, though an application for rejection of the plaint was filed after one year of the service of the summons.

9. The explanation sought to be offered by the defendants does not merit countenance. Omnibus statements have been made that, time was required to gather the documents and give instructions to the Advocate. Since the defendants had already filed an application for rejection of the plaint, I am afraid, such a contention on behalf of the defendants can be legitimately sustained. In the absence of any cogent and satisfactory reason, the condonation of delay would defeat the very object of Order VIII Rule 1 of the Code.

10. In the case of *R. N. Jadi & Brothers and Others vs. Subhaschandra*¹, the Supreme Court has cautioned against condoning the delay in filing the written statement and extending the time indiscriminately, on the premise that the dispensation contained in Order VIII Rule 1 is directory. The

1 (2007) 6 Supreme Court Cases 420.

observations in paragraphs 14 and 15 are instructive and hence extracted below:

“14. It is true that procedure is the handmaid of justice. The court must always be anxious to do justice and to prevent victories by way of technical knock-outs. But how far that concept can be stretched in the context of the amendments brought to the Code and in the light of the mischief that was sought to be averted is a question that has to be seriously considered. I am conscious that I was a party to the decision in *Kailash vs. Nankhu and others* (2005 (4) SCC 480) which held that the provision was directory and not mandatory. But there could be situations where even a procedural provision could be construed as mandatory, no doubt retaining a power in the court, in an appropriate case, to exercise a jurisdiction to take out the rigor of that provision or to mitigate genuine hardship. It was in that context that in *Kailash vs. Nankhu and others* (*supra*) it was stated that the extension of time beyond 90 days was not automatic and that the court, for reasons to be recorded, had to be satisfied that there was sufficient justification for departing from the time limit fixed by the Code and the power inhering in the court in terms of Section 148 of the Code. *Kailash* is no authority for receiving written statements, after the expiry of the period permitted by law, in a routine manner.

15. A dispensation that makes Order VIII Rule 1 directory, leaving it to the courts to extend the time indiscriminately would tend to defeat the object sought to be achieved by the amendments to the Code. It is, therefore, necessary to emphasize that the grant of extension of time beyond 30 days is not automatic, that it should be exercised with caution and for adequate reasons and that an extension of time beyond 90 days of the service of summons must be granted only based on a clear satisfaction of the justification for granting such extension, the court being conscious of the fact that even the power of the court for extension inhering in Section 148 of the Code, has also been restricted by the legislature. It would be proper to encourage the belief in litigants that the imperative of Order VIII Rule 1 must be adhered to and that only in rare and exceptional cases, the breach thereof will be condoned. Such an approach by courts alone can carry forward the legislative intent of avoiding delays or at least in curtailing the delays in the disposal of suits filed in courts. The lament of Lord Denning in *ALLEN vs. SIR ALFRED McALPINE & SONS* [(1968) 1 All E.R. 543] that law's delays have been intolerable and last so long as to turn justice sour, is true of our legal system as well. Should that state of affairs continue for all times?”

(emphasis supplied)

11. Applying the aforesaid principles to the facts of the case, the learned Civil Judge does not seem to have committed any error in declining to extend the time to file the written statement, as no sufficient cause to extend the time was made out. The petition, therefore, does not deserve to be entertained.

12. The petition stands dismissed.

[N. J. JAMADAR, J.]