



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.577 OF 2025**

M/s. Neelam Traders and Anr. ... Applicants
versus
Rajesh Ramji Chheda and Ors. ... Respondents

WITH
CIVIL REVISION APPLICATION NO.578 OF 2025

M/s. Hareshkumar Hansraj and Co. and Anr. ... Applicants
versus
Kantaben Ramji Chheda ... Respondents

Mr. Bhavik Lalan i/by Ms. Aruna Savla, for Applicants.
Mr. Shobhit Shukla for Respondents.

CORAM: N.J.JAMADAR, J.

DATE : 9 DECEMBER 2025

P.C.

1. Heard the learned Counsel for the parties.
2. These Civil Revision Applications are directed against the orders dated 14th February 2023, directing the suit to proceed ex parte, and 22 September 2025 passed by the learned Judge, City Civil Court, whereby the Notices of Motion taken out by the Defendants to condone the delay in entering appearance upon service of the writ of summons in summary suits, came to be dismissed.
3. The Writ of Summons was served on the Applicants – Defendants on 4 November 2022. On 5 December 2022 an Advocate appeared before the learned Judge, City Civil Court, on behalf of the Defendants and sought time

to take out Notice of Motion as there was delay in entering appearance on behalf of the Defendants. The Applicants assert that, there was negligence on the part of the said Advocate and the Notices of Motion, as undertaken, were not filed, and, eventually, the Defendants engaged another Advocate and the instant Notices of Motion were taken out to condone the delay in entering appearance and leave to defend the suit.

4. Learned Counsel for the Applicants submitted that there was no negligence or inadvertence on the part of the applicants. They had entrusted the matter to an Advocate, who did not take out the Notice of Motion. When it was realized that the Advocate whom the Applicants had initially briefed, did not take necessary steps, the Applicants changed the Advocate. In these circumstances, the applicants who are laymen cannot be made to suffer for the negligence or inaction on the part of the Advocate. To buttress this submission, reliance was sought to be placed on the judgment of the Supreme Court in the case of **N. Balakrishnan V/s. M. Krishnamurthy**¹ and the order of the Rajasthan High Court in the case of **Ajeet Singh Rathore V/s. State of Rajasthan and Ors.**²

5. Learned Counsel for the Respondents – Plaintiffs resisted the submissions on behalf of the Applicants. It was submitted that there was inordinate delay in taking out Notices of Motion to condone the delay in

1 (1998) 7 SCC 123

2 SB Civil WP No.18308 of 2024 dated 25-11-2024

entering appearance. In the affidavit in support of the Notices of Motion, the applicants have made irrelevant assertion that amendment was sought, though there was no occasion to seek amendment. Nor the applicants have made any reference to the circumstances which would warrant the grant of leave to defend.

6. The material on record indicates that, under a month of the service of the writ of summons, an Advocate had appeared before the learned Judge, City Civil Court and sought time to take out Notice of Motion. It seems that, thereafter, none appeared on behalf of the applicants till 11 October 2024, on which date Advocate Prakash Gada appeared for the Defendants. It is true, there is a considerable delay in taking out Notices of Motion for condonation of delay in entering the appearances. Prima facie, it appears that the Defendants had done all that was within their power by appointing an Advocate and entrusting the defence of the suit to him. After appearing on 5 December 2022, the concerned Advocate did not appear before the City Civil Court.

7. In these circumstances, this court is of the considered view that the cause of justice would be advanced if the applicants are granted an opportunity by condoning the delay in entering appearance. The Respondents – Plaintiffs, who were put to inconvenience and delay, can be compensated by payment of costs.

8. Hence, the following order :

ORDER

- (i) The Civil Revision Applications stand allowed.
- (ii) The impugned orders stand quashed and set aside.
- (iii) The orders setting the suit ex-parte stand set aside.
- (iv) Delay in entering the appearance stands condoned, subject to payment of costs of Rs.50,000/- in each of the suits, to the Plaintiffs.
- (v) Costs to be paid within a period of two weeks from today.
- (vi) Payment of costs shall be a condition precedent.

(N.J.JAMADAR, J.)