

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION**

**INTERIM APPLICATION NO. 380 OF 2025  
IN  
SUIT NO. 237 OF 2023**

**VIMLA APARTMENT CHS LTD. )...APPLICANT**

**IN THE MATTER BETWEEN**

**M. K. BUILDERS AND OTHERS )PLAINTIFFS**

**V/s.**

**TEJPAL ALIAS SANJAY JAY SINHA KAJARIA )  
AND OTHERS )...DEFENDANTS**

Mr.Atul Singh, Advocate for the Applicant/Defendant no.6 in S/237/2023.

Ms.Savita Sawalkar i/by M/s.Tamhane & Co., Advocate for the Plaintiffs and for the Applicant in IA/2566/2023.

Mr.Vikramjit Garewal a/w. Mr.Sanjay Maji, Ms.Bijal Gandhi i/by DM Legal, Advocate for the Defendants no.2 to 5 and for the Applicants in IAL/2438/2025 and IAL/26332/2025.

**CORAM : ABHAY AHUJA, J.**

**DATE : 13<sup>th</sup> FEBRUARY 2025**

**PC. :**

1. This Interim Application seeks setting aside of the order dated 27<sup>th</sup> February 2024 passed by the Prothonotary & Senior Master and for condonation of delay in filing the written statement and for directions to the Registry to accept the written statement on behalf of the Defendant no.6.

2. Mr. Atul Singh, learned Counsel, appears for the Applicant and submits that the Suit came to be filed by the Plaintiffs in March 2023 against various Defendants including the Applicant who is Defendant no.6 in the Suit. It is submitted that the Suit and the writ of summons as well as the plaint was served in June 2023 by registered post. That, after receipt of papers and proceedings the committee members of the Applicant – society prepared copies of the papers and appointed an Advocate to represent them. It is submitted that at the time of handing over the papers, the writ of summons remained to be handed over to the Advocate and therefore the Advocate remained under an impression that the Applicant had been served by the papers and proceedings privately and that the writ of summons was not served. It is submitted that through inadvertence the fact of receipt of writ of summons remained to be intimated to the Advocate.

3. Mr. Singh would submit that the Suit came to be listed for directions for the first time before the Prothonotary & Senior Master on 27<sup>th</sup> February 2024. However, since the Advocate was not aware that the writ of summons had already been received, he remained under an impression that the Prothonotary & Senior Master would issue directions for issuance and service of writ of summons upon the

Defendants. It is submitted that on 27<sup>th</sup> February, 2024, the Advocate was held up before another Court and therefore could not attend the hearing on 27<sup>th</sup> February 2024 before the Prothonotary & Senior Master. That, somewhere in the third week of March 2024, the Advocate for the Applicant in the regular course of enquiry about his matters, checked the status of the Suit on the website of this Court and learnt about the order dated 27<sup>th</sup> February 2024 of the Prothonotary & Senior Master and thereafter he immediately contacted the office bearers of the society and after searching the records available with the society, copy of writ of summons that was served upon the Applicant was found. It is submitted that, thereafter, instructions were given to the Advocate to prepare written statement and to take steps to file the same.

4. Mr.Singh would submit that the written statement is ready for filing, however, due to order dated 27<sup>th</sup> February 2024 of the Prothonotary & Senior Master transferring the Suit as against the Applicant to the list of undefended suits, the written statement cannot be filed unless this Court so orders. Mr.Singh submits that the delay in filing this application is due to inadvertence and is only of twelve days from the date of order of Prothonotary & Senior Master and from the date of receipt of writ of summons the delay is of about four months.

5. Mr.Singh, accordingly, submits that since the Applicant is a co-operative housing society, in the interest of justice, the delay be condoned and the order of the Prothonotary & Senior Master be set aside, the delay be condoned and Registry be directed to accept the written statement.

6. Ms.Savita Sawalkar, learned Counsel, appears for the Plaintiffs and submits to the orders of this Court.

7. I have heard the learned Counsel and considered the submissions and I am of the view that the delay is neither intentional nor deliberate and the explanation given is plausible as it is quite possible that the office bearers of the society would have handed over the papers to the Advocate without the writ of summons leaving an impression in the mind of the Advocate that the writ of summons was yet to be served. There is no serious objection from the side of the Plaintiffs as well. As such, there is sufficient cause for the delay.

8. Accordingly, the order dated 27<sup>th</sup> February 2024 of the Prothonotary & Senior Master is set aside. The delay is hereby condoned. Registry to accept the written statement.

9. Let a copy of the written statement be served upon the Plaintiffs within a period of one week.

10. The application, accordingly, stands allowed and disposed as above.

**(ABHAY AHUJA, J.)**

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