

Sharayu Khot.

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

INTERIM APPLICATION NO. 1193 OF 2025

IN

SUIT (L) NO. 7684 OF 2021

Chandan Ram Sumaya

...Plaintiff /
Applicant

Versus

Ram Udharam Sumaya & Ors.

...Defendants

Mr. Prathamesh Kamath a/w Mr. Kayush Zaiwalla, S.B. Rao i/by Ms. Gauri Rao for the Plaintiff / Applicant.

Mr. Harsh Sheth i/by MDP Legal for the Defendant Nos. 1 and 2.

CORAM : R.I. CHAGLA J

DATE : 28 July 2025

ORDER :

1. By this Interim Application, the Plaintiff / Applicant has sought condonation of delay of 500 days in filing of present Application. Further relief has been sought for recall of the order dated 4th July 2023 and for restoration of the captioned Suit (L) No. 7684 of 2021 along with the pending Interim Applications back to the file. In addition, relief is sought for extension of time to comply with the office objections from the date of the order upto four weeks

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thereof.

2. The Applicant has stated that the Associate handling the present case was supposed to comply with the office objections and get the Plaint registered upon its filing. However, in July, 2023, when the conditional order was passed by the Prothonotary & Senior Master, i.e. 4th July 2023 the Associate had shifted to Pune for judicial exam and forgot to inform the objections to the other associate leading it to be out of list of matters for compliance resulting in the rejection of the Suit by the said conditional order.

3. The Applicant has further stated that he had suffered from various health issues during the relevant period, which impeded his ability to comply with the Court's directions. Reference has been made of his having hypertension, high BP and the resultant health complications. The Applicant also required treatment and had to undergo corrective surgery in November 2023.

4. The Applicant has stated that he is conscious of the case and in fact had filed Interim Application in the captioned Suit upon which this Court by order dated 7th April 2021 recorded the

statement of the learned Advocate for the Defendants in terms of prayer clause (a) of the Interim Application and the order was to continue till the next date.

5. The Applicant has submitted that the rejection of the Suit has resulted from the non disclosure of the case status of one of the Associate working with the Advocate of the Applicant due to oversight.

6. The Applicant has stated that the rejection of the Suit was not due to the neglect of the Applicant and that the Applicant shall ensure that he pursues the Suit diligently and in accordance with the due process of law.

7. Mr. Prathamesh Kamath, the learned Counsel for the Applicant has referred to the decision of this Court in **Lok Everest Co-op. Hsg. Soc.Ltd. Vs. M/s. Jaydeep Developers & Ors.**¹, wherein this Court has in the context of Government Circular / Notice dated 15th September 2022 referred to the Full Bench judgment of this Court in **Prem Siddha Co-Op. Housing Society & Anr. Vs. High Power**

¹ IA/308/2019 in SL/1132/2019 order dated 10.03.2023

Committee-II & Ors.², which had followed the decision of the Division Bench of this Court in **Bank of Baroda Vs, Deepak Raghuvir Wagle & Anr.**³ and **Lawrence Fernandes Vs. State of Maharashtra**⁴. In **Lawrence Fernandes** (supra), this Court held that the Prothonotary & Senior Master of this Court is empowered to direct dismissal of the Plaint, Memorandum of Appeal, Execution Application, etc. for non removal of office objections only after such matters are placed before him.

8. Mr. Kamath has submitted that the matter was never placed before the Prothonotary & Senior Master of this Court at the time of rejection of the Plaint and accordingly, the aforementioned decisions are applicable in the present case.

9. Mr. Harsh Sheth, the learned Counsel for the Defendant Nos. 1 and 2 has opposed the reliefs sought for in the Interim Application on the ground that the decision in **Lok Everest Co-op. Hsg. Soc.Ltd.** (supra) and decisions referred to therein are inapplicable to the present case.

² 2016(5) Mh.L.J.778

³ (2007) 6 AIR Bom R 672

⁴ W.P (L) No.2396/2014, Dt.9.9.2015

10. Mr. Sheth has submitted that the matter was placed before the Prothonotary & Senior Master on 4th July 2023 and the Associate of the Advocate for the Plaintiff had appeared and the conditional order was passed by the Prothonotary & Senior Master of this Court granting four weeks from the date of uploading of the order of removal of office objections, failing which the Suit shall stand rejected for non compliance of office objections under O.S. Rule 986.

11. Mr. Sheth has further submitted that there is no sufficient cause made out for condonation of delay in filing of the present Interim Application and/or non removal of office objections. He has submitted that the only cause appears to be that the Plaintiff was suffering from various health issues during the relevant period. However, there are no documents which have been annexed to the Interim Application which shows the Plaintiff requiring treatment and/or hospitalisation as has been submitted in paragraph 8 of the Interim Application.

12. Mr. Sheth has also submitted that merely because the Associate of the Advocate on record of the Plaintiff was unable to

attend after the conditional order dated 4th July 2023 was passed, is an insufficient cause for non compliance of office objections.

13. Having considered the submissions, in my view, **Lok Everest Co-op. Hsg. Soc.Ltd.** (supra), which was in the context of Notices / Circulars issued by the Prothonotary & Senior Master without listing of the matters, which were the subject matter of these Notices, would be inapplicable in the present case. Here, the Prothonotary & Senior Master had listed the captioned Suit and directed that the office objections be complied with within four weeks from the date of uploading of the conditional order dated 4th July 2023, failing which the Suit shall stand rejected for non compliance of office objections under O.S. Rule 986. These are the regular conditional orders which are passed by the Prothonotary & Senior Master and failure to comply with the removal of office objections, result in the Suits being rejected by virtue of the conditional order.

14. However, considering that there is cause shown in the Interim Application for non compliance of office objections viz. the default of the Applicant's Advocate's Associate who had failed to

take steps for removal of office objections, the Applicant as a lay person should not be made to suffer on this ground.

15. There is also merit in the submission on behalf of the Defendants that the Applicant has referred to his having health issues which also required hospitalisation without any supporting doctor's certificate or hospitalisation documents, and hence this cause is not sufficient. The non furnishing of sufficient cause shall result in costs being imposed on the Applicant. Hence, the following order is passed.:-

- (i) Delay in filing of the Interim Application is condoned, subject to payment of costs by the Plaintiff / Applicant in the sum of Rs. 50,000/- (Rupees Fifty Thousand only) to Deeds for Needs Foundation, Row No. C/4, Clover Highlands, Kondhwa, SN. 25/1 to 4, NIBM Road, Pune – 411048, within a period of two weeks from the date of uploading of this order.
- (ii) Subject to payment of costs by the Plaintiff / Applicant as directed above, the conditional order dated 4th July

2023 is set aside and the captioned Suit (L) No. 7684 of 2021 along with pending Interim Applications is restored to file.

(iii) The Plaintiff / Applicant is granted a period of four weeks to comply with the office objections from the uploading of this order. Failure to comply, shall result in captioned Suit being rejected without further reference to the Court.

(iv) Interim Application is accordingly, disposed of.

(v) Needless to state that the statement of the learned Advocate for the Defendants recorded in the order dated 7th April 2021 passed in Interim Application (L) No. 7688 of 2021 shall revive upon restoration of the captioned Suit.

[R.I. CHAGLA J.]