

Kavita S.J.

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

INTERIM APPLICATION NO.1414 OF 2025

IN

SUIT NO.345 OF 2022

Zubeda Haji Salim Chunawala & Ors., ...Applicants /
Org. Defendant
Nos. 3 to 5

In the matter between:

Najma Aslam Merchant & Ors., ...Plaintiffs

Versus

Abdul Rehman Haji Tar Mohamed ...Defendants
Chunawala & Ors.,

Mr. Mutahhar Khan a/w Ms. Kavisha Shah, Mr. Nikhat Chaudhary i/b
India Law Alliance for Applicants/Defendant Nos. 3 to 5.

Mr. Hrushi Marvekar a/w Ms. Shaheda Madraswala i/b Vashi & Vashi
for Plaintiff Nos. 1 & 2.

Mr. Anshul Kochar i/b V.J. Juris for Defendant Nos. 1 & 2.

Mr. Mitesh Parmar a/w Ms. Shweta Kansam for Defendant No.6 & for
Applicant in IA(L) No.17700 of 2025.

Ms. Shruti Vyas i/b Mr. Vikram Jakhadi for Defendant Nos. 7 to 9.

CORAM : R.I. CHAGLA, J.

DATED : 3rd JULY, 2025.

KAVITA
SUSHIL
JADHAV

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Date: 2025.07.07
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ORDER :

1. By this Interim Application, the Applicants/Original Defendant Nos. 3 to 5 have sought condonation of delay of 556 days in filing of Written Statement in the captioned Suit.

2. The Applicants have stated that though the entire set of papers including the copy of Plaint was made available by the Plaintiffs to these Defendants on 18th November, 2022, the erstwhile Advocates for the Applicants had not taken steps in the matter. For the first time on 24th November, 2022, the erstwhile Advocates of Defendant Nos. 3 and 4 entered appearance and filed Vakalatnama. Thereafter, the Applicants through their Advocates appeared on all dates.

3. The Applicants have referred to the Interim Application No.4573 of 2022 which had been filed by the Plaintiffs in the captioned Suit and to which Affidavit-in-Reply had been filed by the Applicants on 27th February, 2024.

4. The Applicants have also referred to the fact that on an earlier date i.e. 21st June, 2023, the Applicant No.4 filed Affidavit of

Disclosure. Thereafter, the Applicants have appointed a new Advocate who filed Vakalatnama on 22nd November, 2023. The Applicants have referred the Interim Application (L) No.1447 of 2024 filed by them on 15th January, 2024.

5. The Applicants state that when the Interim Application (L) No.25429 of 2023 filed by the Defendant No.6 for seeking condonation of delay in filing Written statement came up for hearing on 7th February, 2024, the new Advocate for Applicants inquired with the Applicants, as to whether Writ of Summons was received and whether the Applicants have filed their Written Statement. Accordingly, the Applicants undertook the search of papers made available to the new Advocate, to ascertain whether Writ of Summons had been served upon the Applicants, however, they could not find the same in records. The Applicants have stated that given that the Written Statement is not filed, the Applicants were advised to file Application for Condonation of Delay.

6. The Applicants have stated that they were under the bonafide impression that the Writ of Summons had not been served upon them, therefore, despite appearing in the matter and filing

exhaustive replies to the proceedings, taking out including filing their own Interim application, filing disclosures, filing for quashing of an alleged F.I.R. lodged by the Plaintiff No.1 against them, the Applicants have not filed the Written Statement.

7. The Applicants state that the Applicant No.1 is an ailing senior citizen. The Applicant No.3 continues to live abroad for his work and the Applicant No.2 was busy looking after and taking care of the health of his mother i.e. Applicant No.1 in view of which the Written Statement could not be filed as the Applicants were not aware whether Writ of Summons is served upon them. The Applicants have stated that the delay in filing of the Written Statement is neither deliberate and nor due to any negligence on the part of the Applicants.

8. The Applicants have accordingly filed the Application for condonation of delay of 556 days i.e. from when they have received set of papers on 18th November, 2022.

9. The learned Counsel appearing for the Plaintiffs has opposed the relief sought for in the Interim Application and has tendered an Affidavit-in-Reply to the Interim Application which is

taken on record.

10. The learned Counsel appearing for the Plaintiffs states that there is no satisfactory cause shown for the delay in filing Written Statement and that only the cause is that erstwhile Advocate had committed default in checking whether Writ of Summons had been served despite the entire set of papers alongwith copy of Plaint of the captioned Suit and Interim Application filed by the Plaintiffs had been served on the Applicants on 18th November, 2022.

11. I have considered the averments in the Interim Application as well as the Affidavit-in-Reply filed opposing the relief sought for. Considering that this is not a Commercial Suit and a regular Suit, the outer limit of 120 days from service of Writ of Summons would not apply. Nevertheless, the Written Statement is required to be filed within reasonable time from being served with the Writ of Summons and / or entire set of papers containing copy of Plaint alongwith exhibits and Interim application as in the present case which had been served on 18th November, 2022.

12. The Written Statement had been filed after extraordinary delay of 556 days from receiving the entire set of papers in

the captioned Suit on 18th November, 2022 and that the Applicants only referred to the default of their erstwhile Advocate who had not proceeded in the matter and / or informed the Applicants as to whether the Writ of Summons had been served on them. In view of the Applicants being lay persons, indulgence is shown in allowing the filing of the Written Statement subject to imposition of costs.

13. In view thereof, delay of 556 in filing of Written Statement is condoned, subject to payment of costs of Rs.50,000/- (rupees Fifty thousand only) to the Tata Memorial Centre (Tata Memorial Hospital) by Pay Order, within a period of two weeks from today, the details of which are as follows :

“Tata Memorial Centre (Tata Memorial Hospital)

Address : Dr. Ernest Borges Marg,
Parel, Mumbai – 400 012,

Bank name : Central Bank of India,
TMH Parel, Mumai – 400 012,

Tata Memorial Centre (Tata Memorial Hospital),
A/c No. 1002449683,
IFSC Code – CBIN0284241.

14. The Registry shall accept the filing of Written Statement, subject to the payment of costs.

15. The Interim Application is accordingly disposed of.

[R.I. CHAGLA, J.]