

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

IN ITS COMMERCIAL DIVISION

INTERIM APPLICATION NO. 4108 OF 2025

IN

INTERIM APPLICATION NO. 353 OF 2025

Mohan Steels Limited

... Applicant

Versus

Surya Global FZC

... Respondent

WITH

INTERIM APPLICATION NO. 353 OF 2025

IN

COMMERCIAL SUMMARY SUIT (L) NO. 1246 OF 2019

.....

Mr. Krusha Maheshwari instructed by Mr. Sriram Sridharan, Advocate
for the Applicant.

None for the Respondent.

.....

CORAM : ABHAY AHUJA, J.

DATE : 8 OCTOBER 2025

PC. :

Interim Application No.4108 of 2025 in Interim Application No.353 of 2025 and Interim Application No.353 of 2025 :

1. By these two Interim Applications, the Applicant is seeking condonation of delay of 286 days in filing the restoration application and restoration of the Commercial Summary Suit and the connected Interim Applications and the Leave Petition that came to be dismissed for non-prosecution on 23rd January 2024.

2. Ms. Maheshwari, learned Counsel, appearing for the Applicant in the two Applications submits that the Suit had been filed through the firm M/s. Laxmikumaran and Sridharan and Advocate Vishal Lohire then working with the firm was Advocate on record in the Suit. That Advocate Vishal Lohire alongwith Advocate Punit Tyagi were the primary Attorneys responsible for handling the matter. It is stated in the Applications that Advocate Vishal Lohire left the firm in or around 31st July 2021 and subsequently, Advocate Punit Tyagi also left the firm in or around 31st March 2022, however, the Applicant was not notified of their departures from the firm nor did the said Advocate transfer the vakalatnama but continued to remain on record.

3. Ms. Maheshwari submits that on 2nd January 2024, when the suit was listed before this Court, none appeared for the Applicant and the Court ordered that the suit alongwith the said Applications to be listed on 23rd January 2024 making it clear that if no representation was made on behalf of the Applicant/Plaintiff on that date, the Court would consider dismissing the suit. Since none appeared on 23rd January 2024, while recording the earlier order, this Court dismissed the Suit alongwith the connected Applications and the Leave Petition.

4. Ms. Maheshwari submits that although Advocate Vishal Lohire was on record, he neither appeared on the said dates nor informed the

firm or the Applicant about the listing and therefore, the firm was not aware about the listing, which led to the dismissal of the Suit and the connected proceedings.

5. Ms. Maheshwari submits that on 16th November 2024, a board meeting of the Applicant was scheduled and one of the agenda items was to update the board regarding the on going legal cases. That in preparation for the meeting, the Applicant's representative reached out to Advocate Punit Tyagi for an update, but did not receive any response. Since no response was received, the Applicant's representative personally visited the firm's office on 24th November 2024 to enquire, when the Applicant learnt that the said Advocate Punit Tyagi and Advocate Vishal Lohire had left the firm since 31st March 2022 and 31st July 2021 respectively. Upon reviewing the case status of the Suit on the High Court Website, it was discovered for the first time that the Suit and the connected proceedings had been dismissed by order dated 23rd January 2024.

6. Ms. Maheshwari submits that the dismissal of the Suit came as a complete shock to the Applicant considering that a sum of USD 42,576,996.20 alongwith interest was at stake in the matter.

7. Ms. Maheshwari submits that non-appearance of the Plaintiff was due to break down of the communication between the Advocate on

record and the firm regarding handling of the Suit without any fault on the part of the Applicant and relies upon a decision of the Nagpur Bench of this Court in the case of *Chhaya w/o Dattatray Aurangabadkar (Dead) through L.Rs. vs. Waman s/o Pundlik Bhaje*¹ and in particular paragraphs 6 to 9 and 13 to submit that in cases where the matter is dismissed for want of prosecution due to the absence of Advocate, the question of negligence or lack of bonafides on the part of litigant does not arise at all.

8. Ms. Maheshwari submits that therefore this Court may not only condone the delay of 286 days but also restore the Suit and the connected proceedings, which came to be dismissed due to the non-appearance of the Advocate on record. Ms. Maheshwari submits that as soon as it was learnt that the suit had been dismissed, instructions were given to file for restoration and these Applications have been filed on 5th December 2024.

9. Ms. Maheshwari submits that service has been effected by e-mail on 26th December 2024 as well as by paper publication dated 28th August 2025 as permitted by this Court and that despite service none appears for the Respondent. Ms. Maheshwari submits that this Court may on any reasonable terms allow the Application.

1 2017(6) Mh.L.J.

10. I have heard the learned Counsel and considered her submissions.

11. It is to be noted that despite service none appears for the Respondent. The order dismissing the suit and the connected proceedings is of 23rd January 2024. The Advocate on record and failed to attend the matter despite having filed vakalatnama. Although the firm was not directly on record, however the said Advocate on record admittedly was working with the firm till 31st July 2021. If a client approaches the firm, it is understood that the firm will take care of the interest of their client, even if not directly on record, especially considering that in the facts of this case, admittedly the said Advocate was working with the firm. Although the terms of engagement of the Advocate on record and the firm have not been placed on record, the firm would also have to take responsibility for the dismissal. Simplicitor to shift the entire responsibility on the Advocate on record, in my view, would not be appropriate, especially when the said Advocate was working with the firm till 31st July 2021. It cannot be said therefore that this is a classic case where the Advocate has faulted and that therefore for fault of the Counsel, Lawyer and Advocate, the question of negligence or lack of bonafides would not arise.

12. Even the ground of non-appearance due to break down of communication between the Advocate on record and the firm regarding handling of Suit is not supported by any facts in the application.

13. At the same time, this Court can not be oblivious to the fact that the Suit had been filed for recovery of USD 42,576,996.20 purportedly for goods sold and delivered by the Applicant to the Defendant. The Applicant cannot made to suffer due to the fault of the Advocates and/or the law firm and this Court is mindful of the same.

14. It is clear from the Application that the Applicant has been diligent in pursuing the status of the litigation and that is how the fact that the suit was dismissed came to light when the Applicant's representative personally visited the law firm's office on 24th November 2024 in Mumbai in preparation for the board meeting on 16th November 2024. But prior to that the Applicant did not seem to obtain any status report.

15. It is not that the Court had dismissed the matter in the first instance when the parties did not appear as has been stated in the application. On 2nd January 2024, the Plaintiff/its Advocate were put to notice that if none appears for the Plaintiff or the Applicant or the Petitioner, this Court would consider dismissing the Suit on the next date. It is only after putting the Plaintiff/Advocate to notice that the

Suit and the connected proceedings came to be dismissed on 24th January 2024.

16. In the case of commercial matters, imposition of costs is the norm and an explanation/reason has to be given, if the costs are not imposed. Although there is no defence or opposition to the applications, considering that there have been omissions in attending to the matter listed before this Court, I am inclined to allow the Applications only subject to payment of costs.

17. In view of the above discussion, subject to payment of costs of Rs.50,000/- to the High Court Employees Medical Welfare Fund at Mumbai, within a period of two weeks, the delay of 286 days in filing the application for restoration is condoned. Subject to the above, the Commercial Summary Suit (L) No. 1246 of 2019 and connected proceedings be restored to file. The office objections be removed and registered number be obtained within a period of two weeks thereafter, failing which the Commercial Summary Suit to stand dismissed without further reference to the Court.

18. The Interim Application stands allowed and disposed as above.

(ABHAY AHUJA, J.)