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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO. 2752 OF 2025

IN

SUIT NO. 154 OF 2024

Bakulesh T. Shah and another ... Applicants

In the matter between :

Vrindavan Co-operative Housing Society Limited ... Plaintiff

Versus

Bakulesh T. Shah and others ... Defendants

.....

Mr. Gaurav Mehta alongwith Mr. Mukul Taly, Ms. Sehry Taly and Mr. Ravikumar Kamble instructed by S. Mahomedbhai & Co., Advocate for the Applicants/Original Defendants No.1 and 2.

Mr. Rohan Sathaye alongwith Ms. Zainab Tinwala instructed by M & M Legal Ventures, Advocate for the Respondent/Original Plaintiff.

Ms. Apurva Dalal alongwith Ms. Pooja Yadav, Advocate for the Defendants No.10 & 11 – BMC.

Ms. Nikita Bordepatil alongwith Ms. Tithi Raut instructed by FF & Associates, Advocate for the Defendants No.4 and 4A.

Mr. Mohit Jadhav, Addl.GP, for the State of Maharashtra.

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CORAM : ABHAY AHUJA, J.

DATE : 4 NOVEMBER 2025

P.C. :

1. This Interim Application filed on behalf of the Defendants No.1 and 2 seeks condonation of delay of 321 days in filing the written statement dated 23rd June 2025, after setting aside the order of the Prothonotary & Senior Master dated 24th June 2025 transferring the suit to the list of undefended suits as against the Defendants No.1 and 2.

2. Mr. Mehta, learned Counsel, appearing for the Applicants submits that the primary reason for the delay after service of the writ of summons was that the parties were under discussions to see if the matter could be settled and that thereafter it took time to collate the documents to be filed in support of the written statement.

3. Mr. Mehta submits that the settlement talks have not fructified and therefore, to defend the case on merits the written statement would be necessary to be filed. Mr. Mehta draws this Court's attention to a communication dated 25th April 2025 from the Advocates for the Plaintiff to the Advocate for the Applicants. Mr. Mehta further submits that the Applicants have an excellent case on merits and *bonafide* defence in the suit, *inter-alia* seeking cancellation of the lease and conveyance executed by the Defendant No.6 in favour of the Applicants over a portion of the suit property admeasuring 889.20 sq. meters. Mr. Mehta submits that although there has been a delay of 321 days, in the interest of justice, this Court may allow the application and submits that this Court may also put the Applicants to reasonable terms for the same.

4. On the other hand, Mr. Sathaye, learned Counsel, appearing for the Plaintiff-Society submits that although it is true that the discussions were going on to settle the matter, however the reason that time was required for collating documents is infact false and bogus, in as much as, the documents stated to be necessary for the written statement were already with the said Defendants. Mr. Sathaye draws this Court's attention to paragraph 5 of the reply and submits that out of the nine Exhibits, Exhibits 1 to 6 were with the said Defendants prior to the service of the writ of summons. Exhibits 7 and 8 are the documents dated 31st July 2024 and 30th July 2024 respectively and even these documents were available with the Applicants prior to the expiry of the 90 days period from the date of service of the writ of summons. That Exhibit 9 was also available with the Applicants prior to the expiry of the 90 days period.

5. Mr. Sathaye submits that in fact the said documents have already been annexed to the various affidavits that have been filed by the said Defendants in the interim proceedings. Mr. Sathaye submits that this Court may therefore in view of the decision of the Hon'ble Supreme Court in the case of *Kailash vs. Nanhku and others*¹, which

1 (2005) 4 SCC 480

clearly holds that a departure from the time schedule prescribed by Order VIII Rule 1 of the Code of Civil Procedure, 1908 must be made only in circumstances which are exceptional, occasioned by reasons beyond the control of the Defendants and grave injustice would be occasioned if the time was not extended, and since the facts of the present case do not present any such situation nor any sufficient cause has been made out by the Applicants for the delay and that therefore, this Court may pass appropriate orders considering the same.

6. I have heard the learned Counsel and considered their submissions.

7. This Suit was filed on 13th July 2023. The writ of summons was served on 8th May 2024. Thirty days period would end on 7th June 2024 and the ninety days period ended on 6th August 2024. On 21st March 2025, the Prothonotary & Senior Master recorded a submission that the Applicants would take steps for condonation of delay in filing the written statement and the matter was adjourned to 24th June 2025. That on 23rd June 2025, the written statement was affirmed and on 24th June 2025 the present Interim Application seeking condonation of

delay was filed. That on 24th June 2025 itself, the Prothonotary & Senior Master has transferred the suit to the list of undefended suits as against the Defendants No.1 and 2. The Defendants No.1 and 2 on 5th August 2025 have filed an additional affidavit placing the said order of the Prothonotary & Senior Master on record and seeking a prayer to set aside the same. The Plaintiff has filed its reply on 5th August 2025 opposing the Interim Application. On 7th August 2025, this Court permitted amendments for including prayers to set aside the order dated 24th June 2025. Rejoinder dated 9th September 2025 has been served, however, the same has not been filed. The same accordingly is taken on record.

8. Admittedly, the delay occasioned is of 321 days and there is no dispute about the same. Learned Counsel for the Applicants has submitted that discussion was going on between the parties to settle the matter. In fact, a communication dated 24th April 2025 from the Advocates from the Plaintiff to the Advocates for the Applicants, which is at Exhibit A to the rejoinder clearly indicates that the parties had mutually decided to adjourn the matter before the court. Even the learned Counsel appearing for the Plaintiff has not disputed the said communication nor the fact that settlement talks were going on

between the parties. The only dispute is that the reason that it took time to collate the documents is not tenable as the documents were already in the possession of the said Applicants and had also been filed.

9. It is not in dispute that the suit *inter-alia* seeks cancellation of the lease and conveyance in favour of the Applicants over a portion of the suit property. The Applicants have averred that they have an excellent case on merits and *bonafide* defence. The Hon'ble Supreme Court in the case of *Kailash vs. Nanhku and others* (supra) has clearly observed that ordinarily, the time schedule prescribed by Order VIII Rule 1 has to be honoured and that the extension can be only by way of an exception and for reasons assigned by the Defendants and also recorded in writing by the Court of its satisfaction. That a departure on the timelines stipulated in Order VIII Rule 1 is to be permitted only in exceptional circumstances which would cause grave injustice if not extended. It has also been observed in paragraph 44 of the said decision that the Court may impose costs to deter the Defendant from seeking any extension of time just for the asking and to compensate the Plaintiff for the delay and inconvenience caused to him. That there is no straitjacket formula for the same and the satisfaction of the Court is the key. It has also been held in the case of ***Bharat Kalra vs. Raj Kishan***

*Chabra*² that where the delay can be compensated by imposition of costs, the Defendant should not be denied of right to defend his case on merits.

10. Therefore, even if the ground for time taken to collate the documents to file written statement may not be tenable, it cannot be denied that the parties were in settlement talks. It also cannot be denied that the suit seeks to cancel a lease in favour of the Applicants. Therefore, in my view, the Applicants ought to be permitted to defend the suit on merits but not without balancing the situation.

11. Having heard the learned Counsel and having considered the aforesaid, I am of the view that the delay in filing the written statement be condoned, subject to costs on the Applicants for the delay, although partly explained due to the settlement talks going on between the parties.

12. Accordingly, subject to payment of costs of Rs.25,000/- to the Plaintiff within a period of two weeks, the Interim Application is allowed in terms of prayer clauses (A), (B) and (B-1), which read thus :

2 2022 SCC OnLine SC 613

(A) That this Hon'ble Court be pleased to condone the delay of 321 days in the Applicants/Original Defendant Nos.1 and 2 in filing their Written Statement dated 23rd June 2025 in the captioned Suit No.154 of 2024.

(B) That the Hon'ble Court be pleased to take on record the Written Statement affirmed/declared/verified on 23rd June 2025 on behalf of the Applicants/Original Defendant Nos.1 and 2.

(B-1) That this Hon'ble Court be pleased to set aside the Order dated 24th June 2025 passed by the learned Prothonotary & Senior Master of this Hon'ble Court whereby the captioned Suit has been transferred to the list of undefended suits as against the Applicants/Original Defendant Nos.1 and 2.

13. Just when the order is passed, Mr. Sathaye, Advocate for the Plaintiff submits that his client is not interested in receiving the costs and the costs be paid for a charitable purpose.

14. Let the costs as above be paid within a period of two weeks to the Indian Army Welfare Fund.

15. The Interim Application accordingly stands allowed and disposed as above.

(ABHAY AHUJA, J.)