

Kavita S.J.

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

INTERIM APPLICATION NO.3239 OF 2025

IN

SUIT (L) NO.5521 OF 2022

M/s Sterling Motors

...Applicant/Org. Plaintiff

Versus

Mahesh Rathi

...Defendant

Ms. Diksha Shetty a/w Ms. Prachi shah i/b AAK Legal for
Applicant/Plaintiff.

None for the Defendant.

CORAM : R.I. CHAGLA, J.

DATED : 18th AUGUST, 2025.

ORDER :

1. By this Interim Application, the Applicant / Original Plaintiff has sought condonation of delay of 638 days in filing the Restoration Application. Further, relief is sought for restoration of Original Suit (L) No.5521 of 2022 to file before this Court by setting aside Order dated 1st August, 2023.

2. The learned Counsel for the Applicant has tendered a copy of Affidavit of Service of the Interim Application which shows

KAVITA
SUSHIL
JADHAV

Digitally signed
by KAVITA
SUSHIL JADHAV
Date: 2025.08.20
18:40:07 +0530

that by the Plaintiff's Advocate Notice dated 16th July, 2025, the Advocates for the Defendant have been served by RPAD and the Tracking Report shows "item delivered confirmed".

3. The learned Counsel for the Applicant has also referred to the Notice of the Plaintiff's Advocate dated 14th August, 2025 giving notice of the listing of the matter today before this Court to the Defendant and annexing a copy of the Interim Application which had been served by RPAD. The said Notice was delivered on 16th August, 2025. In spite of service, none appears for the Defendant.

4. The Applicant has stated in the Interim Application at Paragraph 4 that the Advocate on record had informed the Clerk to remove the office objections in the matter within the time specified in the conditional order of the Prothonotary and Senior Master of this Court dated 1st August, 2023. The office objections were not removed within the stipulated period as the Clerk had inadvertently missed the date. This is stated to be a bonafide mistake. Thereafter, the Advocate on record, upon enquiry, found that the matter had been dismissed for non removal of office objections. Hence, the present Interim Application for restoration has been filed.

5. The Applicant has stated that due to the default on the part of the Advocate's Clerk, the Applicant / Litigant may not be made to suffer as it is the duty of the Advocate and Advocate's Clerk to remove the office objections.

6. The learned Counsel for the Applicant has referred to the decision of this Court in *Minal Bhavnesh Gandhi & Ors., vs. Prithvi Vallabh Balchandra Rawat in Interim Application No.1296 of 2025 in Civil Application (St.) No.25544 of 2017 in First Appeal No.934 of 2024 dated 30th January, 2025.* She has stated that in a similar situation as the present case where restoration of the Suit had been sought on account of default on the part of the Advocate's Firm, this Court had allowed the Application, subject to payment of costs of Rs.10,000/- to be paid to Kirtikar Law Library.

7. Considering that a similar situation has arisen in the present case and though it is stated by the learned Counsel for the Applicant that in the referred to case there was a delay of 1577 days as compared to the delay in the present case which is of 638 days, the extent of delay in both the cases is exhorbitant which requires imposition of costs.

8. Accordingly, in view of there being default on part of the Advocate's Clerk for non-removal of objections within time stipulated in the conditional Order dated 1st August, 2023, the Applicant being a lay person should not be made to suffer. However, in view of there being considerable delay in filing of the present Interim Application, the Applicant shall pay costs of Rs.10,000/- on similar terms as that in the referred to Order dated 30th January, 2025.

9. Hence, the following order:

(i) Delay of 638 days in filing the present Interim Application is condoned.

(ii) The Original Suit (L) No.5521 of 2022 is restored to file by setting aside the Order dated 1st August, 2023 passed by the Prothonotary and Senior Master of this Court. This shall be subject to payment of Rs.10,000/- to Kirtikar Law Library, which shall be within a period of two weeks from today.

(iii) The Interim Application is accordingly disposed of.

[R.I. CHAGLA, J.]