

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
COMMERCIAL CIVIL APPELLATE JURISDICTION**

**INTERIM APPLICATION (L) NO.40613 OF 2025
IN
COMMERCIAL APPEAL FROM ORDER (L) NO.40611 OF 2025
IN
REVIEW APPLICATION NO. 2 OF 2025
IN
COMMERCIAL SUIT NO.149 OF 2025**

Advanced Technology Products Inc.

...Applicant
(Orig. Defendant)

Vs.

Oriental Export Corporation

...Respondent
(Orig. Plaintiff)

Mr. Gaurav Mehta a/w Mr. Ravitej Chilumuri, Ms. Aafreen Noor, Mr. Prince Todi, Ms. Sanya Gandhi i/b. Khaitan & Co. for the Applicant/Orig. Defendant.

Ms. Ankita Singhania a/w Burzin Somandy, Rina Ram and Nikita H. Joshi i/b. Somandy and Associates for the Respondent/ Orig. Plaintiff.

**CORAM : R. I. CHAGLA AND
ADVAIT M. SETHNA, JJ.**

DATED : 20TH JANUARY, 2026

P.C.:-

1. By this Interim Application the Applicant/Appellant has sought condonation of delay of 179 days in filing of the Appeal against the impugned order dated 25 April 2025 passed by the City Civil Court, Dindoshi.
2. The Applicant has stated that it is an Ohio based Corporation and

does not have any office in India. It is further stated that the Applicant has been served with the Writ of Summons pursuant to an order dated 9 May 2025. It is stated that the Applicant was unaware that prior thereto by an order dated 17 April 2025, the Presiding Officer of the City Civil Court, Dindoshi refused to register the Commercial Suit due to the original Plaintiff/Respondent's failure to comply with the pre-institution mandate of Section 12A of the Commercial Courts Act, 2015. Further, the Applicant was unaware that the Original Plaintiff/Respondent moved a review before another Judge and vide the impugned order, the said order dated 17 April 2025 was set aside. It is only thereafter that the Commercial Suit was numbered and Notice of Motion No.1735 of 2025 was taken out by the Original Plaintiff/Respondent seeking urgent interim relief against the Applicant.

3. The Applicant has further stated that on 18 June 2025 its Advocate entered an appearance in Court Room No.3, and the matter was adjourned to 20 September 2025 for the Applicant to file its reply to the Notice of Motion filed by the Original Plaintiff/Respondent. It is stated that the Applicant was neither informed nor served a copy of the Review Application and/or impugned order. It is stated that even on said Website of the Court, there was no mention of the impugned order in the list of orders passed in the Commercial Suit, and therefore, the Applicant could not have reasonably ascertained about the Review Application and passing of the

impugned order therein.

4. The Applicant further states that on the next date of hearing i.e. 20 September 2025, the Applicant's Advocate tendered copies of the scanned versions of the pleadings *inter alia* including Notice of Motion No.3408 of 2025 challenging the maintainability of the suit *inter alia* on the ground of non-compliance with mandatory pre-institution mediation under Section 12A of the Commercial Courts Act and requested for a short adjournment to file originals of the said pleadings. The Original Plaintiff/Respondent was also served copies of the said pleadings including Applicant's Notice of Motion.

5. The Applicant states that on 17 October 2025, the Original Plaintiff/Respondent served its reply to the Applicant's Notice of Motion on the Applicant's Advocate. In the reply, for the first time, the Original Plaintiff/Respondent referred to the impugned order and produced a copy of the same. It was only upon perusal of the reply that the Applicant's Advocate became aware of the Review Application, the impugned order passed therein and the original order.

6. The Applicant has further stated that after receipt of the Original Plaintiff/Respondent's reply to the Applicant's Notice of Motion on 17 October 2025, the Applicant's Advocates once again visited the Court's website to ascertain and verify the authenticity of the impugned order referred to in the Original Plaintiff/Respondent's reply. However, the

impugned order was still not appearing in the order history of the Commercial Suit.

7. The Applicant has then referred to the enquiries made regarding the notice under Order XLVII of the Code of Civil Procedure, 1908 in Review Application, which mandates a prior notice to the opposite party before grant of review and that upon such inquiry, the Applicant confirmed that no such notice was received.

8. The Applicant has accordingly filed the present Interim Application for condonation of delay on the ground that the delay in filing the Appeal is bonafide, unintentional and not attributable to conduct of the Applicant.

9. Mr. Gaurav Mehta, learned counsel for the Applicant has made submissions in support of the Interim Application. Ms. Singhanian, learned counsel appearing for the Original Plaintiff/Respondent has tendered an affidavit-in-reply dated 20 January 2026. She has stated that the Applicant has incorrectly stated that the order was unavailable on the Court website as the order was accessible at all relevant times and is still available on its website. She has referred to Exhibit 'C', and in particular page 26 of the affidavit-in-reply to show that there is mention made of the impugned order having been passed and by which the Review Application was disposed of.

10. Ms. Singhanian has stated that there is no sufficient cause shown for condonation of delay and to which she has referred to the relevant paragraphs of the Interim Application. She has stated that in paragraph

14 of the Interim Application, mention is only made by the Applicant of the time taken to examine the record and assess and ascertain the strategy to challenge the impugned order. There is mention made of the vacation period from 19 October 2025 to 26 October 2025 and that the Applicant's Advocates could not apply for a certified copy of the impugned order during the aforesaid period. Exclusion of time in computation of delay in filing the Appeal has been sought. She has submitted that this is not a sufficient cause as per the law laid down by this Court.

11. Ms. Singhanian has also referred to paragraph 15 of the Interim Application wherein, statement is made by the Applicant that multiple levels of management talks were held and taking into account strategic consequences of the impugned order, took time. She has submitted that this is also not a ground for condonation of delay as laid down by this Court.

12. Ms. Singhanian has accordingly submitted that the delay in filing of the present Appeal is not *bonafide* and that the delay ought not to be condoned.

13. Having considered the submissions, it does appear from the record before the City Civil Court, Dindoshi that the Original Plaintiff/Respondent had upon filing of a praecipe, which praecipe forms part of the compilation of documents which has been tendered by Ms. Singhanian (page 189) that the Respondent had sought waiver of the pre-institution mediation under Section 12A of the Commercial Courts Act on ground that the Original

Plaintiff had sought for urgent interim relief by way of injunction and any delay in filing the same would cause irreparable loss and injury to the Original Plaintiff. At that point of time, the Commercial Suit had not been numbered. It is upon this praecipe an order dated 17 April 2025 came to be passed by the learned Judge of the City Civil Court, Dindoshi wherein it was held that the Original Plaintiff had not made out a case for waiver of the mandatory pre-institution mediation under Section 12A of the Commercial Courts Act. The Original Plaintiff was directed to exhaust the remedy of pre-institution mediation. This order has been reviewed by the Original Plaintiff and upon such review being heard, the impugned order had been passed by the City Civil Court, Dindoshi.

14. The Applicant was not a party to such proceedings and hence had no knowledge of the review having being filed by the Original Plaintiff/Respondent and the impugned order being passed. Thus, the benefit of doubt goes to the Applicant in that the Applicant would have not been aware of the impugned order till receipt of a copy of the impugned order which was part of the Original Plaintiff/Respondent's reply to the Applicant's Notice of Motion filed under Order VII Rule 11 on 17 October 2025.

15. We do not find merit in submission of Ms. Singhania that the Applicant having been served with Writ of Summons pursuant to order dated 9 May 2025 ought to have undertaken search of the proceedings and

upon which, the Applicant would have learnt that the impugned order had been passed in the Review Application taken out by the Original Plaintiff/Respondent. Mere service of Writ of Summons on the Applicant does not give reason for the Applicant to carry out search of the proceedings in order to find out whether any order has been passed therein.

16. Thus, it cannot be alleged that no diligence was shown by the Applicant in taking out the present Commercial Appeal from Order impugning the order passed in the Review Application of the Original Plaintiff/Respondent.

17. In view thereof, we find that there is sufficient cause shown by the Applicant for condonation of delay, particularly taking into consideration that the Applicant is a Ohio based corporation and is not having any office in India.

18. Accordingly, we allow the present Interim Application and condone the delay of 179 days in filing the present Commercial Appeal from Order against the impugned order dated 25 April 2025 passed by the learned City Civil Judge, Dindoshi.

19. The Interim Application is made absolute in terms of prayer clause (a). There shall be no order as to costs.

20. The Respondent is allowed to file an affidavit-in-reply to the Commercial Appeal from Order on merits which shall be filed by 29 January 2026.

21. Ms. Singhanian states on instructions that the Notice of Motion No.1735 of 2025 which has been taken out by the Original Plaintiff/Respondent in the Commercial Suit No.149 of 2025 is at the stage of pleadings and the Applicant herein has been directed to file its affidavit-in-reply by 23 January 2026. This statement is accepted.

22. Place the Commercial Appeal from Order on 2 February 2026 ‘High on Board’.

[ADVAIT M. SETHNA, J.]

[R.I. CHAGLA, J.]