

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3630 OF 2026

State Bank of India

..Petitioner

Versus

Bank of India & ors.

...Respondents

Mr. Shivam Kukreja i/b Goenka Law Associates, for Petitioner.

Mr. Prashant A Shinde i/b Mr. Anant B Shinde, for

Respondent No. 1.

Mr. P G Sawant, AGP for Respondent No. 4.

CORAM: N. J. JAMADAR, J.

DATED : 1st APRIL 2026

ORDER :

1. Heard the learned Counsel for the parties.
2. The petitioner-plaintiff assails an order dated 30th October, 2025 passed by the learned Judge, City Civil Court, Mumbai, whereby the Notice of Motion No. 962/2025 taken out by the plaintiff for condonation of delay in filing the summons for judgment in Summary Suit No. 562/2017, came to be dismissed.
3. The plaintiff is a public sector Bank. The Defendant No. 1 is also a public sector Bank. The plaintiff operates as a clearing house. On 23rd February, 2014, a cheque drawn for Rs. 1,30,442/- (Rupees One Lakh Thirty Thousand Four Hundred and Forty Two), by Defendant No. 2 in favour of Defendant No. 3

on an account maintained with Defendant No. 1 Bank was cleared by the plaintiff on account of technical issues in the centralised clearing process, though the account of the Defendant No. 2 could not be debited. Resultantly, the said amount was credited to the account of the Defendant No. 3 from the funds of the plaintiff. Thus, the plaintiff instituted a summary suit on 24th July, 2017, for recovery of an amount of Rs. 1,98,565/- alongwith interest from the Defendant Nos. 1 to 3.

4. The Defendant No. 1 Bank entered appearances on 12th February, 2019, and the Defendant No. 3 appeared on 18th February, 2019. However, the plaintiff did not file a summons for judgment. In the meanwhile, Defendant No. 3 filed an application for stay of the proceedings, and by an order dated 18th July, 2023, the suit came to be stayed qua Defendant No. 3, in view of the liquidation proceedings initiated against Defendant No. 3.

5. The plaintiff thus took out the Notice of Motion on 17th January, 2025 seeking condonation of delay in filing the summons for judgment.

6. By the impugned order, the learned Judge, City Civil Court declined to condone the delay of 1142 days in taking out

summons for judgment, finding the delay both inordinate and unexplained.

7. Being aggrieved, the plaintiff has preferred this petition.

8. Mr. Saurish Shetye, the learned Counsel for the petitioner, submitted that, the learned Judge, City Civil Court did not properly appreciate the reasons ascribed by the plaintiff for the delay in taking out the summons for judgment. The learned Judge, City Civil Court, took a very rigid and hypertechnical view of the matter and did not adhere to the time-tested principle that an application for condonation of delay should receive liberal consideration. Mr. Shetye further urged that, the claim of the plaintiff in the suit is absolutely genuine and refusal to condone the delay results in deprivation of an opportunity to agitate a genuine cause.

9. In contrast, Mr. Prashant Shinde, the learned Counsel for the Respondent No. 1/Defendant No. 1 supported the impugned order. Refuting the submissions on behalf of the petitioner. Mr. Shinde would urge, the facts of the case are so gross that the delay cannot be condoned under any circumstances.

10. I have perused the affidavit in support of the Notice of Motion. Three reasons were primarily sought to be ascribed. First, the situation that arose on account of the Covid-19

pandemic disruptions. Second, the time spent in the adjudication of the application preferred by the Defendant No. 3 for the stay of the proceedings. Third, negotiations were underway between the plaintiff and Defendant No. 1 Bank.

11. It is true, in the matter of condonation of delay, the courts adopt a liberal approach so as to advance the cause of substantive justice, which is subserved by deciding the lis on merits rather than on technicalities. This fundamental principle informs the Court's discretion to lean in favour of condonation of delay. However, where the delay is inordinate and also appears to be unexplained different considerations come into play.

12. In the case at hand, as noted above, the Defendant No. 1 Bank appeared in response to the summons in the summary suit on 12th February, 2019 and the Defendant No. 3 appeared on 18th February, 2019. The plaintiff was thus required to take out the summons for judgment under Order XXXVII Rule 3(4) of the Code. Under Rule 119(4) of the City Civil and Sessions Court Rules, the summons for judgment ought to be filed within six months from the date of institution of the suit. The learned Judge, City Civil Court has noted that, there was delay of about 1142 days in taking out the summons for judgment.

13. It is in the aforesaid context, the reasons ascribed by the plaintiff for condonation of delay were required to be appreciated. On the first count of the disruptions on account of Covid-19 pandemic, the learned Judge, City Civil Court has rightly recorded that, the suspension of the period of limitation pursuant to the order of the Supreme Court with effect from February, 2020, commenced much after the period of six months had expired, and, therefore, the plaintiff could not take advantage of the suspension of period of limitation. Secondly, even after the order of the Supreme Court suspending the period of limitation ceased to operate since 01st March, 2022, it did not appear that, any steps were taken by the plaintiff to take out the summons for judgment.

14. The second reason of pendency of application for stay filed on behalf of the Defendant No. 3, sought to be ascribed on behalf of the plaintiff, in a sense, dents the plaintiff's case. The plaintiff claimed to have participated in the said proceeding. It defies comprehension as to why the plaintiff did not take out the summons for judgment though the plaintiff very much participated in the proceedings before the trial Court.

15. The third reason of the delay, namely, delay on account of negotiations between the Plaintiff No. 1 and Defendant No. 1

Bank is required to be stated to be repelled. The incident of unjustified clearing of the cheque took place on 13th February, 2014. The suit was instituted in the year, 2017. Despite appearance of the Defendant Nos. 1 to 3 the summons for judgment was not taken out for over 1100 days. In this backdrop, the plaintiff assertions that, the summons for judgment could not be taken out as there were negotiations for amicable settlement between the Plaintiff No.1 and Defendant No. 1 does not constitute a sufficient cause.

16. The length of the delay is a relevant factor. If the delay is inordinate, like the case at hand, the party claiming the condonation of delay must satisfactorily account for the delay. The endeavor of Mr. Shetye to salvage the position by adverting to the merits of the matter, cannot be acceded to. The Supreme Court has clarified that, the merits of the matter can be considered only after the court is satisfied that the party seeking condonation has ascribed a justifiable cause and, at the same time, the resistance to the condonation of delay is worthy of consideration and, in that event, on balance, the merits of the matter can be looked into. The Court cannot start with the consideration on the merits of the matter in the first instance.

17. A useful reference, in this context, can be made to a judgment of the Supreme Court in the case of **Union of India and Anr Vs Jahangir Byramji Jeejeebhoy (D) Through His LR**,¹ wherein the following observations were made:

“26. The length of the delay is a relevant matter which the court must take into consideration while considering whether the delay should be condoned or not. From the tenor of the approach of the appellants, it appears that they want to fix their own period of limitation for instituting the proceedings for which law has prescribed a period of limitation. Once it is held that a party has lost his right to have the matter considered on merits because of his own inaction for a long, it cannot be presumed to be non-deliberate delay and in such circumstances of the case, he cannot be heard to plead that the substantial justice deserves to be preferred as against the technical considerations. While considering the plea for condonation of delay, the court must not start with the merits of the main matter. The court owes a duty to first ascertain the bona fides of the explanation offered by the party seeking condonation. It is only if the sufficient cause assigned by the litigant and the opposition of the other side is equally balanced that the court may bring into aid the merits of the matter for the purpose of condoning the delay.

27. We are of the view that the question of limitation is not merely a technical consideration. The rules of limitation are based on the principles of sound public policy and principles of equity. We should not keep the ‘Sword of Damocles’ hanging over the head of the respondent for indefinite period of time to be determined at the whims and fancies of the appellants.

(emphasis supplied)

¹ 2024 SCC OnLine SC 489.

18. In the light of the aforesaid legal position and upon application of the same to the facts of the case at hand, this Court is of the considered view that, the plaintiff has failed to ascribe a sufficient cause for condonation of huge delay of 1142 days in taking out the summons for judgment.

19. The exercise of the discretion by the learned Judge, City Civil Court, thus, does not require interference in exercise of the supervisory jurisdiction.

20. The Writ Petition thus stands dismissed.

21. No costs.

[N. J. JAMADAR, J.]