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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION NO. 6978 OF 2025**

IN

COMMERCIAL SUIT NO. 27 OF 2022

Rajesh Laxmichand Bheda ... Applicant

IN THE MATTER BETWEEN

Ketan Vallabhji Veera and Ors ... Plaintiffs

vs.

Municipal Corporation of Greater Mumbai and ... Defendants
Ors

WITH

INTERIM APPLICATION NO. 3301 OF 2022

IN

COMMERCIAL SUIT NO. 27 OF 2022

Entire Estates Pvt Ltd ... Applicant

IN THE MATTER BETWEEN

Ketan Vallabhji Veera and Ors ... Plaintiffs

vs.

Municipal Corporation of Greater Mumbai and ... Defendants
Ors

WITH

INTERIM APPLICATION NO. 8238 OF 2025

WITH

INTERIM APPLICATION NO. 922 OF 2022

IN

COMMERCIAL SUIT NO. 27 OF 2022

Ketan Vallabhaji Veera ... Applicant/Plaintiff

vs.

Municipal Corporation of Greater Mumbai ... Defendant

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through the Municipal Commissioner

Mr. Nigel Quraishy a/w. Mr. Dushyant Krishnan i/b. Garfield Clarence Mendonca for the Plaintiff.

Mr. Kaustubh Thipsay for Defendant Nos. 8, 10, 11 and 14.

Mr. Karl Tamboly a/w. Mr. Adhil Parshurampuriya, Mr. Kartikeya Awasthi i/b. M/s. Purnanand and Co., for defendant no. 9.

CORAM : GAURI GODSE, J.

DATED : 6th JANUARY 2026

ORDER:

1. This application is filed by defendant no.3 for condonation of the delay of 87 days in filing the written statement. According to defendant no.3, the writ of summons was served on 9th May 2023. Since the plaintiffs had filed an affidavit-in-reply stating that the writ of summons was served on 2nd May 2023, an affidavit-in-rejoinder by defendant no.3 was filed stating that the summons was served on 9th May 2023. Learned counsel for defendant no.3, therefore, submits that if the number of days of the delay mentioned as 87 days in the application is read with the statement made in the affidavit-in-rejoinder of defendant no.3, it would support defendant no.3's contention that the writ of summons was served on 9th May 2023. Learned counsel for defendant no.3, therefore, submits that the reasons mentioned in the application for condonation of delay

be accepted as a justifiable reason for not filing the written statement within time. He relies on the contents of the application, which states that defendant no. 3 is a senior citizen and, due to his advanced age, he was unable to take immediate steps to file the written statement within the initial 30-day period. He therefore submits that the delay is unintentional and that the delay in filing the written statement be condoned. The written statement dated 4th September 2023 is annexed to the application for condonation of delay in filing the written statement.

2. Learned counsel for the plaintiff vehemently opposes the application for condonation of delay. The main objection to oppose the application is on the ground that the writ of summons was served upon defendant no.3 on 2nd May 2023, and thus, the application for condonation of delay is filed beyond 120 days permitted under the amended Rule 1 of Order VIII of the CPC, applicable to a commercial suit. He submits that after the period of 120 days from the date of service of the writ of summons, the defendant's right to file a written statement is forfeited, and the time cannot be extended. He therefore submits that the delay in filing the written statement beyond 120 days from the date of service of the writ of summons cannot be condoned.

3. Pursuant to the order dated 16th December 2025, a report dated 5th January 2026, prepared by the Deputy Sheriff, Mumbai, is placed on record. There is no satisfactory explanation regarding not taking steps to file a service report of the Bailiff as required under the sub-rule (3) of Rule 448 of Chapter XXVIII of the Bombay High Court (Original Side) Rules, 1980 ('the OS Rules'). The report states that the online complaint dated 5th July 2023 was lodged by the office of the Sheriff, and the tracking report indicates that the Bhaily SO delivered the article on 2nd May 2023. In the affidavit-in-reply, the plaintiff has stated in paragraph no. 6 that the tracking report obtained from the India Post website reveals that defendant no. 3 was served with a writ of summons, and the copy of the plaint through the bailiff on 2nd May 2023. The printout of the response to the online complaint is annexed by the deputy sheriff in his report, and the same printout is annexed by the plaintiff in the affidavit-in-reply.

4. A perusal of the printout of the report taken from the India Post website, shows that it is a response to the online complaint filed regarding the postal packet dispatched to defendant no.3. The postal report refers to the stages and the particulars of the postal packet dispatched for service. However, none of the particulars in the report would show that the postal packet containing the writ of

summons, along with the plaint and the supporting documents, was delivered to defendant no.3 on 2nd May 2023. The printout annexed at Exhibit A to the affidavit-in-reply is not a tracking report of the postal packet, but it is a response to the online complaint regarding the postal packet addressed to defendant no.3 vide a postal receipt at Exhibit A. However, there is no statement in the affidavit of the plaintiffs that the postal packet of which the receipt is annexed at Exhibit A to the affidavit-in-reply contained the writ of summons of defendant no.3, along with the copy of the plaint and the annexures. Neither the plaintiff filed any affidavit of service of the writ of summons upon defendant. 3 nor the sheriff's office has submitted any service report. Hence, there is no material on record to accept that the writ of summons was served upon defendant no.3 on 2nd May 2023 as contended by the plaintiff.

5. As per Rule 445 of the OS Rules, the service of a writ of summons must be served through the office of the Sheriff. Under sub-rule (3) of Rule 448 of Chapter XXVIII of the OS Rules, after effecting service by the office of the sheriff, the advocate shall file an affidavit of service of the writ of summons within two weeks, failing which the sheriff's office shall file a service report of the Bailiff directly to the court. Because the sheriff's office failed to comply, a report was called for from the sheriff's office. The report seeks to

explain and justify non-compliance with Rule 448 of the OS Rules. The sheriff's report refers to the scarcity of staff as compared to the huge pendency of completing the service and the difficulties faced by the sheriff's office in effecting service of the writ of summons.

6. Thus, there is no material on record which would indicate that the writ of summons was served upon defendant no. 3 on 2nd May 2023, as contended by the plaintiff. The affidavit-in-reply of the plaintiff refers to the postal receipt and the tracking complaint report status with regard to the same. However, even the tracking complaint report is not sufficient to conclude that the postal packet containing the writ of summons was served upon defendant no. 3 on 2nd May 2023. The last entry in the tracking complaint status reads as under:

“Sir/Madam, it is intimated by Bhaily SO that CM076240023IN delivered on 02/05/2023. POD attached.”

7. Thus, there is no clarity that the postal packet containing the writ of summons along with the plaint and annexures was served upon defendant no.3 on 2nd May 2023. The report simply states that the postal packet with reference to the relevant receipt number was delivered on 2nd May 2023, and the POD (proof of delivery) is attached. However, no such proof of delivery is attached to the

report. Hence, the tracking complaint status cannot be accepted as proof of delivery of the writ of summons upon defendant no.3 on 2nd May 2023. Except for stating in the affidavit that the writ of summons was served upon defendant no. 3 on 2nd May 2023, the plaintiff has not placed on record any proof of service of the writ of summons upon defendant no.3 on 2nd May 2023. In the absence of any proof of service of the writ of summons on 2nd May 2023, I see no reason for not accepting the statement of defendant no.3 that the writ of summons was served on 9th May 2023.

8. The proof of service of a writ of summons on a defendant, especially in a commercial suit, has an important significance, as there is a serious consequence of forfeiture of the defendant's right to file a written statement after expiry of 120 days from the date of service of the writ of summons. A defendant's right to file a written statement cannot be forfeited in a casual manner. Unless there is sufficient proof of service of the writ of summons in accordance with the law, the defendant's right to file a written statement cannot be forfeited.

9. In the present case, in the absence of any evidence to support the plaintiff's contention that the writ of summons was served on 2nd May 2023, it cannot be concluded that the writ of

summons was served upon the defendant no.3 on that day. The contention of defendant no.3, that the writ of summons was served on 9th May 2023, is accepted. The grounds raised by defendant no.3 in his application explaining the reasons for the delay are not disputed in the affidavit-in-reply of the plaintiff. Even otherwise, the reasons stated in the application are justifiable and acceptable. Defendant No. 3 has raised sufficient grounds explaining the delay in filing the written statement. Hence, for the reasons stated in the application, the delay of 87 days in filing the written statement is condoned, and the interim application is allowed in terms of prayer clauses (a) and (b). The written statement of defendant no. 3 is taken on record.

10. It is necessary to express some serious concern about the manner in which the service of a writ of summons is handled by the sheriff's office. As per Rule 76 of Chapter VI of the said OS Rules, read with Rule 448 of Chapter XXVIII of the OS Rules, the plaintiff is permitted to get the writ of summons served by registered post through the Sheriff's office. However, the primary responsibility of proper service of writ of summons is upon the sheriff's office as stated in Rule 448. Hence, the sheriff's office is expected to comply with the procedure for effecting service and file an appropriate service report directly with the court in the event that the advocate

fails to file the service affidavit within two weeks after effecting service by the office of the sheriff. After a writ of summons is lodged for service in the office of the sheriff, it is the obligation on the part of the sheriff's office to complete the service of the writ of summons and file a service report directly to the court. The sheriff's office is not expected to handle the procedure casually for effecting the service of a writ of summons. When the writ of summons is issued by post, it is the duty of the Sheriff's office to verify whether the postal packet contains the writ of summons along with the plaint and annexures and whether the postal acknowledgement pertains to the same postal packet and is seen to have been acknowledged by the addressee.

11. It is a common experience of this court that the service of a writ of summons is not effected in the manner as provided under the Civil Procedure Code, read with the relevant rules of the said OS Rules, especially in a commercial suit where the defendant's right stands forfeited after 120 days from the date of service of the writ of summons. The procedure for effecting a writ of summons and filing the appropriate proof of writ of summons must be filed before the court by the Sheriff's office within the time prescribed by the said OS Rules.

12. In light of the concerns expressed in the report of the learned Deputy Sheriff and the directions issued in the orders annexed to the report, the learned Prothonotary and Senior Master is requested to verify the current status and submit a report before the next date.

13. The report filed by the learned Deputy Sheriff expresses grievance about the shortage of staff and difficulties faced by the sheriff's office. The data mentioned in the report, the vacancies, and the state of affairs are startling and shocking. The report filed by the learned Deputy Sheriff refers to the Orders passed by this Court regarding the sanctioned strength and vacant posts in the Sheriff's office, and the directions issued to the State Government to take appropriate action. In view of the startling and shocking state of affairs, the learned Government Pleader (Original Side) is requested to verify the current status and submit a report to assist the court in addressing the concerns discussed in this order.

14. Though the application is allowed, the reports shall be submitted to this court on the next date to enable this court to address the concerns expressed in this order.

15. Learned counsels appearing in the matter are at liberty to submit written submissions on the next date to assist the court in addressing the concerns expressed in this order.

16. All other pending applications shall be listed on the next date for hearing. Defendant no.9 is permitted to file an additional affidavit on/or before the next date to support the reasons for condonation of the delay in filing the written statement.

17. A copy of this order shall be forwarded to the learned Prothonotary and Senior Master and the learned Government Pleader (Original Side).

18. Stand over to 23rd January 2026, at 3:00 p.m.

(GAURI GODSE, J.)