

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

INTERIM APPLICATION NO.6212 OF 2025
IN
SUMMONS FOR JUDGMENT NO.3 OF 2025
IN
COMMERCIAL SUMMARY SUIT NO. 1 OF 2025

VINAY FABRICS PRIVATE LIMITED AND OTHERS)...APPLICANTS
IN THE MATTER BETWEEN
MANGLA AMIT BUILDERS PVT. LTD.)...PLAINTIFF
V/s.

VINAY FABRICS PRIVATE LIMITED AND OTHERS)...DEFENDANTS

Mr.Sumeet Nankani a/w. Mr.Devakinandan Singh, Ms.Trisha Rath i/by
Mr.Nikhil Rungta, Advocate for the Applicants / Original Defendants.
Mr.Amit Patil a/w. Mr.Mittal Munoth and Ms.Anushka Jain, Advocate
for the Respondent / Original Plaintiff.

CORAM : ABHAY AHUJA, J.

DATE : 18th FEBRUARY 2026

PC. :

1. This Interim Application seeks condonation of delay in filing an application for leave to defend and reply to the Summons for Judgment.

2. Mr.Sumeet Nankani, learned Counsel appearing for the Applicants / Original Defendants, submits that the appearance was

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entered in time on 26th March 2025 after which the matter was listed on 23rd April 2025. That, on 23rd April 2025, the Plaintiff was directed to serve Summons for Judgment on the Defendants and the Defendants viz. the Applicants herein, were directed to file reply after receipt of the same and the matter was adjourned to 9th July 2025.

3. Mr.Nankani submits that the Plaintiff served the Summons for Judgment via email on the Advocate for the Defendants on 26th April 2025 as well as on 22nd May 2025, both of which went into the spam folder and were therefore not noticed. That, on 9th July 2025, the matter was listed, however, due to paucity of time, the same was adjourned to 13th August 2025. On 13th August 2025, the Advocate for the Defendants could not appear and the Plaintiff was directed to file Affidavit of service of the Summons for Judgment and the matter was adjourned to 3rd September 2025. It is submitted that on 14th August 2025, the Advocate for the Plaintiff served hard copy of the Summons for Judgment on the Defendants along with their Advocate via courier. The Advocate for the Defendants on receiving the Summons for Judgment sought instructions for filing the reply and leave to defend.

4. Mr.Nankani submits that from August to September 2025, the Applicant no.3 – Managing Director of the Defendant no.1, was not keeping well and hence reply / leave to defend could not be notarized. That, on 3rd September 2025, the matter was listed before this Court and since time was sought to file Interim Application for condonation of delay in filing leave to defend, the matter was adjourned to 24th September 2025. On 24th September 2025, when the matter was called out, since this Court was informed that the Interim Application seeking condonation of delay in filing the leave to defend had been lodged and served, this Court had directed that a response to the Interim Application be filed within a period of two weeks and rejoinder in two weeks thereafter and listed the matter on 12th November 2025.

5. Mr.Nankani submits that if the date of service of the Summons for Judgment via email is considered, then the delay in seeking condonation of delay is 136 days whereas if the date when the hard copy of the Summons for Judgment was served is taken as 14th August 2025, then the delay is 26 days. Mr.Nankani submits that although the Summons for Judgment was received via email on 26th April 2025 as well as on 22nd May 2025, the same had gone into the spam folder and was not noticed by the Advocate for the Applicants. That, the same was

through inadvertence and for no fault of the Advocate or the Applicants and the delay therefore be condoned by this Court, not only because the Advocates had no knowledge of the same but also because the said mails were sought to be sent to the Advocates and not to their clients – the Applicants, it being well settled that for the fault of the Advocate, the litigant - client should not be made to suffer.

6. Mr.Nankani submits that if the delay of 26 days is considered from the date of 14th August 2025 when the hard copy of the Summons for Judgment was received, then since the same was due to ill-health of the Managing Director viz. the Applicant no.3 and completely unintentional and beyond the control of the Applicants, there is sufficient cause and the delay be condoned. Mr.Nankani draws this Court's attention to the Medical certificate at page 66, Exhibit A to the rejoinder. Mr.Nankani submits that the Applicants also have a good case on merits. Mr.Nankani submits that, therefore, the delay having been sufficiently explained, this Court condone the same and direct the Registry to accept the reply and the leave to defend.

7. Mr.Amit Patil, learned Counsel, appears for the Respondent / Original Plaintiff and submits that in a number of recent decisions in

commercial matters, it has been held that spam folder defence is not to be accepted by the Courts. Mr.Patil submits that, more particularly so, since earlier on 27th March 2025 an email was sent by the Advocate for the Applicants / original Defendants from the very same email-ids on which the Summons for Judgment was served on 26th April 2025 and on 22nd May 2025. Drawing this Court's attention to email dated 27th March 2025, Mr.Patil for the Plaintiff submits that in the said communication at paragraph 3, the two email-ids have clearly been mentioned by the learned Counsel for the Defendants and that the Counsel for the Defendants cannot now turn around and say that the said emails went into spam folder and were therefore not noticed. That, this Court may consider the same before passing any orders on the Interim Application, as the said communication is in accordance with Order XXXVII Rule 3(1) of the Code of Civil Procedure, 1908 ("CPC"). Mr.Patil submits that it is the obligation and responsibility of the recipient to check the email which has been furnished or to correct the settings such that when emails are sent on the said addresses, they are received. That, no inadvertence or want of knowledge can be pleaded in such circumstances. That, therefore, this Court may consider the same before passing any orders on the Interim Application. As regards the delay of 26 days from the date of physical service of the

Summons for Judgment, Mr.Patil submits that the same has also not been sufficiently explained except that a Medical certificate regarding the condition of the Managing Director viz. the Applicant no.3 has been annexed advising rest. But in any event, since spam folder defence will not be available in this case, the explanation of Medical certificate is immaterial.

8. Mr.Patil, however, submits that in the event this Court is inclined to allow the application, then as required under the CPC as applicable to commercial matters, costs be imposed.

9. I have heard the learned Counsel and considered the submissions.

10. It is not in dispute that the Applicants have received the Summons for Judgment via email on 26th April 2025 as well as on 22nd May 2025 on the email addresses that had been furnished by email dated 27th March 2025 by the Advocate for the Defendants in accordance with Order XXXVII Rule 3(1) of the CPC. What is being submitted before this Court is that since the emails went into the spam folder, the emails were not checked. It also cannot be disputed that

after receiving the physical copy of the Summons for Judgment on 14th August 2025, the Advocate sought instructions and had this Interim Application affirmed on 23rd September 2025 and filed it on 24th September 2025. Mr.Nankani has explained that after receiving the hard copies, between August and September 2025, the Applicant no.3 viz. the Managing Director of the Applicant no.1, was advised rest for fifteen days, and therefore, the reply could not be notarized, and therefore, the delay be condoned. The Medical certificate at Exhibit A to the rejoinder is dated 28th August 2025 which indicates that the Managing Director viz. the Applicant no.3 has been advised fifteen days rest. This explanation for the limited time duration is adequately explained and can be accepted.

11. Coming to the receipt of the Summons for Judgment by email, no doubt, it is the duty of the person furnishing the email address under Order XXXVII Rule 3(1) of the CPC to check the email on the said email-ids and also that inadvertence is not a satisfactory explanation to condone delays and it cannot be contended and has not been contended on behalf of the Applicants that the Summons for Judgment was not received by email, but it is not uncommon for emails sent first time by unknown persons to be received in spam folders which even

the most techno savvy people would not check on a regular basis. Therefore, the delay does not appear to be intentional or deliberate nor can negligence be attributed to the Applicants. The Advocate for the Applicants has pleaded inadvertence. Certainly, the explanation of inadvertence cannot be said to be satisfactory. But it is well settled that for the fault of the Advocate, his clients / litigants should not be made to suffer. It is also well settled that the litigants should not be non-suited for the delay which can be compensated with costs, particularly when it has also been submitted that the Applicants have a good case on merits.

12. Therefore, while Mr.Patil for the Plaintiff is right that an obligation is cast on the person furnishing the email address under Order XXXVII Rule 3(1) of the CPC, considering that there has been no deliberate or intentional act to cause the delay, albeit the explanation for the cause not being fully satisfactory, I am inclined to allow the application but by balancing the situation, for which I propose to impose costs upon the Applicants.

13. Accordingly, in exercise of powers under Order XXXVII Rule 3(7) of the CPC, subject to payment of costs of Rs.25,000/- by the

Applicants to the Plaintiff / Respondent within a period of two weeks, the delay in filing the application for leave to defend and reply to the Summons for Judgment No.3 of 2025 is condoned.

14. Subject to payment of costs as above, the Registry is directed to accept the reply and the application for leave to defend after service of the same to the Plaintiff within a period of one week.

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

(ABHAY AHUJA, J.)