

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

INTERIM APPLICATION NO. 7712 OF 2025
IN
SUIT NO. 964 OF 2018

Navin Properties Pvt. Ltd.

...Applicant

V/s.

Vasudev Dayaram Navani (Deceased)

...Respondent

WITH
SUIT NO. 964 OF 2018
WITH
INTERIM APPLICATION NO. 7707 OF 2025
WITH
INTERIM APPLICATION NO. 7709 OF 2025
WITH
INTERIM APPLICATION NO. 7695 OF 2025
WITH
INTERIM APPLICATION NO. 7698 OF 2025
WITH
INTERIM APPLICATION NO. 7699 OF 2025
WITH
INTERIM APPLICATION NO. 7701 OF 2025
WITH
INTERIM APPLICATION NO. 7710 OF 2025
WITH
INTERIM APPLICATION NO. 7643 OF 2025
WITH
INTERIM APPLICATION NO. 7655 OF 2025
WITH
INTERIM APPLICATION NO. 7656 OF 2025
WITH
INTERIM APPLICATION NO. 7657 OF 2025
WITH
INTERIM APPLICATION NO. 1493 OF 2025
WITH
INTERIM APPLICATION NO. 499 OF 2025
WITH
INTERIM APPLICATION NO. 5605 OF 2025

**WITH
INTERIM APPLICATION NO. 7697 OF 2025**

Mr. Rahul Kamerkar with Ms. Aparajita Jha for the Plaintiff.

Mr. Darshan Mehta with Ms. Megha Sanghavi i/b Dhruve Liladhar & Co. for the Defendants No. 2,3,4,8,9,10,17,18,20,21,33 and 34 and for Applicant.

Mr. Feroze Patel with Mr. Aziz Mohd. & Sehyr Taly i/b S. Mahomedbhai & Co. for the Applicants in IA 1493/25 and for Defendants No. 5,6 & 31 in the Suit.

Mr. Jeet Gandhi for the Defendant No. 13.

Mr. Nirav Shah with Ms. Niharika Singh and Ms. Richika Kadam i/b Little and Co. for the Defendants No. 26,36 and 37 in Suit 964/18.

Ms. Khushnumah Banerjee i/b Vidhii Partners for the Defendant No.30.

Mr. Ankit H. Pandey for the Applicant in IA 5605/25.

**CORAM : ABHAY AHUJA, J.
DATE : 7th JANUARY, 2026**

P.C. :

1. These 13 Interim Applications filed by the Defendants No.2 to 4, 8 to 10, 16 to 18, 20, 21, 33 and 34 seek condonation of delay of 182 days in filing the respective written statements.

2. It is not in dispute that the copies of the amended Plaint were served on 17th October, 2024, after which the writ of summons was served on 1st May, 2025. That on 3rd September, 2025, the Prothonotary & Senior Master has recorded that on 20th August, 2025 a statement was made on behalf of the said Applicants that they would file Interim Applications for condonation of delay in filing the written statement, however, no such Interim Application had been filed and therefore, the

Prothonotary & Senior Master by order dated 3rd September, 2025 has transferred the Suit to the list of undefended Suits as regards the said Defendants.

3. Mr. Mehta, learned Counsel appearing for the Applicants submits that earlier on 29th January, 2025 two of the Defendants had filed an Application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (“CPC”) for rejection of the Plaint. Mr. Mehta submits that it is settled law that the Defendant is entitled to file an application for rejection before filing his written statement and in case the application is rejected, the Defendant is entitled to file his written statement and refers to the decision of the Hon’ble Supreme Court in the case of ***R. K. Roja Vs. U. S. Rayudu and Anr.***¹.

4. Mr. Mehta further submits that since the Suit had been amended and there were volumes of information which had to be collated, there has been a delay of six months, which is not intentional. The Defendant No.1, who used to handle the day-to-day affairs pertaining to the companies and in the management and in control of the records, documents and correspondence, passed away on 3rd October, 2020 and upon his demise, the Defendant No.2, who is the director was required

1 (2016) 14 SCC 275

to step into his shoes and take charge of all the affairs managed by him including those from the present Suit which involved familiarizing herself with large volumes of documents, accounts and correspondence including 11 volumes of the Plaint in the Suit. This exercise required collation of the voluminous material which took time. That since there has been suppression in the Suit that has been filed with respect to the data and material and the exercise involved time which has led to the delay. It has been submitted that delay is not deliberate or intentional.

5. Mr. Mehta submits that the Suit is not a commercial suit and that the unamended Order 8 Rule 1 of the CPC continues to be directory and does not do away with the inherent discretion of this Court to condone delay and relies upon paragraph 13 of the decision of the Hon'ble Supreme Court in the case of *Desh Raj Vs. Balkishan (Dead) Through Proposed Legal Representative Ms Rohini*². Mr. Mehta submits that the Suit seeks not only declaratory relief against the Defendants, declaring certain acts of the Defendants as illegal, null and void, but also perpetual injunctive relief against the Defendants and also makes serious allegations against the deceased Defendant No.1 of forgery of signatures, siphoning off monies and misappropriation of funds, which would have to be defended as the Plaint suppresses and omits to

2 (2020) 2 SCC 708

disclose several material facts and transactions directly related to issues and controversy in the Suit. Mr. Mehta submits that, therefore, this Court set aside the order of the Prothonotary & Senior Master dated 3rd September, 2025, condone the delay of 182 days and direct the Registry to accept the written statements on behalf of the Applicants.

6. On the other hand, Mr. Kamerkar, learned Counsel appears for the Plaintiff and submits that although no reply is necessary to be filed, however, this Court may consider that although the amended Plaint had been served earlier and also that before the Prothonotary & Senior Master on 20th August, 2023 time had been sought to file the written statements, no written statements had been filed. That no proper reason has also been even given for the delay in filing this Application and affirming written statement on 1st December, 2025. That only two Defendants had filed the application under Order VII Rule 11 of the CPC and the same was pending when the Prothonotary & Senior Master has transferred the Suit as against the Applicants to the list of undefended suits.

7. I have heard the learned Counsel and considered their submissions.

8. It is not in dispute that while the Application filed under Order VII Rule 11 of the CPC by two of the Applicants was pending the Prothonotary & Senior Master has on 3rd September, 2025 transferred the Suit as regards the Applicants to the list of undefended Suits. It is also true that the unamended Order VIII Rule 1 of the CPC applicable to the non-commercial suits is directory and this Court has jurisdiction to condone the delay. The outer timeline for filing the written statement in a non-commercial dispute is 90 days.

9. In the facts of these cases, there has been a delay of 182 days in doing so. A Defendant is entitled to file an application under Order VII Rule 11 of the CPC before filing his written statement. The reason given for the delay apart from the filing of the Application for rejection of the Plaint by the two Defendants for the two Defendants as well as for the others is that the Defendant No.1, who used to handle the day-to-day affairs pertaining to the companies and in the management and in control of the records, documents and correspondence, passed away on 3rd October, 2020 and upon his demise, the Defendant No.2, who is the director was required to step into his shoes and take charge of all the affairs managed by him including those from the present Suit which involved familiarizing herself with large volumes of documents,

accounts and correspondence including 11 volumes of the Plaint in the Suit. This exercise required collation of the voluminous material which took time. That since there has been suppression in the Suit that has been filed with respect to the data and material and the exercise involved time which has led to the delay. It has been submitted that delay is not deliberate or intentional. It is also observed that earlier on 20th August, 2023 before the service of writ of summons, the said Applicants had sought time to file written statement before the Prothonotary & Senior Master. That the order of the Prothonotary & Senior Master transferring the suits as regards the said Applicants to the list of undefended suits also records that on 20th August, 2025, on behalf of the said Applicants, a statement was made that they will file interim application for condonation of delay and since the same had not been done, the Suit been transferred.

10. From the aforesaid facts it emerges that although an endeavour has been made to explain the delay as sufficient, although there is indeed an explanation, however, the same cannot be fully regarded as satisfactory as only a general submission has been made that time was involved in collating voluminous records as the Defendant No.1 had passed away and which caused the delay *albeit* unintentional.

11. The Hon'ble Supreme Court in the case of ***Kailash vs. Nanku***³ has observed that the provisions of Order VIII Rule 1 of the CPC are directory and not mandatory but only in exceptional situations the court may extend the time for filing the written statement even though the time period for filing of written statement has expired. In the facts of this case, the Suit is seeking directory and perpetual injunction reliefs against the Defendants alleging forgery, siphoning of monies, misappropriation of funds which the Applicants have denied on the grounds of suppression and omissions, which brings out exceptional situation. It is also settled law that preference should be to hearing the matters on merits after the trial, rather than dismissing on technicalities.

12. Further, in the case of ***Bharat Kalra Vs. Raj Kishan Chandra***⁴, the Hon'ble Supreme Court has observed that if the delay can be well compensated with costs, denying the benefit of filing written statement would be unreasonable.

13. Accordingly, I am inclined to allow these Applications, subject to payments of costs of Rs. 5,000/- in each of the Applications to the Plaintiff within a period of two weeks.

3 (2005) 4 SCC 480

4 2022 SCC OnLine SC 613

14. Let the written statements dated 1st December, 2025 be filed and served in two weeks after payment of costs.

15. The Interim Applications accordingly stand allowed and disposed of as above.

Interim Application No. 5605 of 2025

16. This Interim Application seeks deletion of the address of the Defendant No. 25 in the Plaint on the ground that the said address is the registered office address of M/s Aswini Properties Pvt. Ltd. and not of M/s Ashwini Properties Pvt. Ltd.

17. Mr. Pandey, learned Counsel appears for the Applicant viz. Aswini Properties Pvt. Ltd. and draws this Court's attention to Exhibit A, which is a copy of the company information from the Ministry of Corporate Affairs with respect to the Applicant, which contains the registered address as 17, Tara Chand Dutt Street, Kolkata, West Bengal, India, 700073. A comparison of the said address along with the address of the Defendant No.25 indeed indicate that the address is the same.

18. Mr. Kamerkar, learned Counsel for the Plaintiff and Mr. Mehta, learned Counsel for the Defendants submit that the learned Counsel for the Applicant is indeed correct and that this Court may not only allow

the Application but also on an oral application permit deletion of the Defendant No. 25.

19. Having heard the learned Counsel and having considered their submissions, this Court is of the view that the Interim Application be allowed in terms of prayer Clause (a), which reads thus:-

“a) that this Hon’ble Court be pleased to direct the Plaintiff to amend the Complaint and delete the address belongs to the Applicant and to further carry out all consequential amendments as may be required and necessary.”

20. Also in view of the submissions made on behalf of the learned Counsel for the Plaintiff and the Defendants, the Defendant No.25 is permitted to be deleted.

21. Let the Plaintiff carry out the amendments within a period of two weeks. Reverification is dispensed with.

22. The Interim Application is allowed and disposed as above.

(ABHAY AHUJA, J.)

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signed by
NIKITA
YOGESH
GADGIL
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