



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 5199 OF 2025

Vijay Radheshyam Kedia, Aged 57 years, Occ: Business,
R/o Chandralok Housing Society, Shegaon, Dist. Buldana.

PETITIONER

VERSUS

Madhusudan Satyanarayan Tibdewal, Aged 71 years,
Occ: Business, R/o Gujrati Housing Society,
Shegaon, Dist. Buldana.

RESPONDENT

Shri M.S. Sharma, counsel for the petitioner.
Shri R.K. Thakkar, counsel for the respondent.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE : JANUARY 30, 2026

ORAL JUDGMENT

RULE. Rule is made returnable forthwith and heard finally with consent of the learned counsel for the parties.

2. By this petition, the petitioner challenges the order dated 11.08.2025 passed by the trial Court, whereby the application at Exhibit 20 seeking condonation of delay and permission to file reply to the application under Order XXXIX Rule 2A of the Code of Civil Procedure, 1908 (for short, “the Code”) came to be rejected.

3. The controversy arises out of proceedings of a civil suit bearing Regular Civil Suit No.22 of 2008, in which the petitioner is defendant and respondent is plaintiff. The proceedings under Order XXXIX Rule 2A of the Code were initiated by the plaintiff alleging breach of the injunction order and seeking attachment of the defendant’s property and his detention in civil prison. The counsel for the petitioner advanced submissions to seek one opportunity to file reply to put forward his defence.

4. The learned counsel for the respondent contended that the grounds raised in support of the application, viz. pendency of proceedings under Order XXXIX Rule 11 of the Code and engagement of a new advocate do not constitute sufficient cause or bona fide reasons for condonation of delay. It was further submitted that the petitioner lacked diligence in filing the reply, despite actively prosecuting other proceedings and therefore the impugned order needs no interference.

5. While considering the rival submissions, it has to be seen that the parties have been diligently contesting the civil suit. The petitioner/original defendant has not only contested the proceedings under Order XXXIX Rule 11 of the Code but has also prosecuted the writ petitions arising from orders passed in the said suit. It has to be noted that although the respondent/original plaintiff initiated proceedings under Order XXXIX Rule 2A of the Code, it is undisputed that the petitioner has already rectified the alleged breach.

6. The petitioner, who is the non-applicant in the proceedings under Order XXXIX Rule 2A of the Code, wants to place on record material facts relating to the removal of the Otta, rectification of the alleged breach and the order dated 29.03.2023 passed by this Court in Writ Petition No. 2181 of 2018. These aspects have a direct bearing on the proceedings under Order XXXIX Rule 2A of the Code, which are drastic in nature and may entail serious consequences.

7. The record reveals that the petitioner has a substantial defence to contest the proceedings under Order XXXIX Rule 2A of the Code. His contention regarding removal of the Otta was also considered by this Court while passing order dated 29.03.2023 in Writ Petition No.2181 of 2018. Although it is undisputed that the petitioner was prosecuting the application under Order XXXIX Rule 11 of the Code after his defence was struck off, it is also relevant to note that upon consideration of the overall factual and legal aspects, the defence of the defendant was restored. Therefore, merely because the petitioner was prosecuting the proceedings under Order XXXIX Rule 11 of the Code, it cannot be inferred that he deliberately avoided filing a reply to the application under Order XXXIX Rule 2A of the Code.

8. The proceedings under Order XXXIX Rule 2A of the Code may incur drastic consequences, including attachment of property and civil imprisonment. As such, denying an opportunity even to file a reply in such proceedings would render the party defenceless. Considering that the defendant was *bona fide* prosecuting the writ petition before this Court and having regard to his overall conduct, he deserves to be granted an opportunity to file his reply.

9. A perusal of the impugned order shows that although the trial Court observed that serious prejudice would be caused to the non-applicant if he is denied permission to file a reply, however the trial Court has only focused on the delay caused and concluded that the petitioner was not diligent. In view of the severe consequences involved, the trial

Court ought to have adopted a balanced approach and granted an opportunity to the non-applicant to file its reply. The trial Court has adopted a hyper technical approach and as such, the impugned order does not stand to the scrutiny of law.

10. Having regard to the overall factual and legal aspects, the petitioner/original defendant is entitled to file a reply to the application under Order XXXIX Rule 2A of the Code. At the same time, the hardship and inconvenience caused to the respondent due to the delay has to be compensated by awarding appropriate costs. Pertinent to note, the petitioner has shown his bonafides by depositing the amount of Rs.20,000/- by way of Demand Draft, as per order dated 10.09.2025. It is clarified that the costs imposed by this judgment are separate from the earlier amount of Rs.20,000/- and the petitioner is entitled to withdraw the said amount of Rs.20,000/-. Hence, considering the entire facts and circumstances, the following order is passed:-

- I. The writ petition is allowed.
- II. The order dated 11.08.2025 passed by the trial Court on the application at Exhibit 20 in M.J.C. No. 44 of 2011 is quashed and set aside.
- III. The application at Exhibit 20 seeking permission to file reply to the application under Order XXXIX Rule 2A of the Code is allowed, subject to payment of costs of Rs.25,000/- (Rupees Twenty Five Thousand), to be deposited by the petitioner before the trial Court within two weeks from the date of uploading of this order.
- IV. The respondent shall be entitled to withdraw the amount of costs by filing an appropriate application.

11. Rule is made absolute in the aforesaid terms.

(PRAFULLA S. KHUBALKAR, J.)

APTE