



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
INTERIM APPLICATION NO.4761 OF 2025  
IN  
SUIT NO.393 OF 2022**

Gautam Dham Co-operative Housing Society Limited  
Through its Secretary having its office at  
S. No.238A, Hissa No.6 (Part),  
368-A, Bajaj Road, Dhunbaiwadi,  
Ville Parle (W), Mumbai - 400 056.

...Applicant/  
Org. Defendant No.1

**IN THE MATTER BETWEEN:-**

- 1) Funds and Properties of Parsi Panchayat,  
Bombay, having its registered address at  
209, Dr. Dadabhai Naoroji Road,  
Fort, Mumbai 400 - 001.
- 2) Armaity Rustom Tirandaz,  
Age : 75 years,  
Occ. : Social Worker & Physiotherapist.
- 3) Noshir Homi Dadrawala,  
Age : 47 years, Occ. : Service.
- 4) Kersi Jamshed Randeria,  
Age : 63 years, Occ. : Service.
- 5) Viraf Dinshav Mehta,  
Age : 41 years, Occ. : Service.
- 6) Xerxes Vispi Dastur,  
Age : 50 years, Occ. : Chartered Account.

All present Trustees of Funds and  
Properties of the Parsi Panchayat Bombay,  
Having their registered address at  
209, Dr. Dadabhai Naoroji Road,  
Fort, Mumbai - 400 001.

.....Plaintiffs

**Versus**

- 1) Gautam Dhan Co-operative Housing Society Limited,  
Through its Secretary having its office at S. No.238A, Hissa No.6 (Part),  
368-A, Bajaj Road, Dhunbaiwadi, Ville Parle (W), Mumbai - 400 056.
- 2) Shri Kaikhushroo F. Dubash,  
Firuze Aara Apartments,  
Opp. Secretariat, Fort, Mumbai – 01.
- 3) M/s. Gautam Associates,  
1210/1211, Dalamal Tower,  
Nariman Point, Mumbai - 400 021. ...Defendants

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Mr. Rohaan Cama a/w Mr. Kyrus Modi, Mr. Pankaj Pandey & Mr. Smit Nagda for the Applicant/Defendant No.1.

Mr. Smith Colaco i/by Mulla & Mulla And Cragie Blunt & Caroe for the Plaintiffs/Respondents.

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CORAM : JITENDRA JAIN, J.  
RESERVED ON : 19<sup>th</sup> September 2025  
PRONOUNCED ON : 20<sup>th</sup> September 2025

**JUDGMENT:-**

1. This Application is taken out by the Original defendant No.1, seeking condonation of 75 days delay in filing written statement in a non-commercial suit.

**Submission of Defendant No.1 :-**

2. Mr. Cama, learned counsel appearing for the defendant submits that writ of summons was served on Defendant No.1 on 08.03.2023 and as per Order V Rule 1 of the Code of Civil Procedure, 1908 (CPC) they were supposed to file written statement within 30 days, which expired on

07.04.2023. However, the written statement was filed on 21.06.2023, resulting in delay of 75 days starting from 08.04.2023. He further relied on paragraph 2 of the present application and stated that the delay is on account of the office of the Advocate who received the writ of summons, but the Advocate's office inadvertently did not inform the Advocate about the said writ of summons. Thereafter, on inquiry by the office bearers of defendant No.1, the Advocate inquired with his staff and became aware that the writ of summons had been served on 08.03.2023. Thereafter, the Advocate took immediate steps in drafting the written statement, getting it approved by the office bearers of defendant No.1 and held conference for finalization of the same. He, therefore, submitted that on account of sufficient cause, there has been a delay and the Defendant No.1 has not gained by the said delay. He, therefore, prayed for Interim Application being allowed in terms of prayer clause (a).

#### **Submissions of the Plaintiff:-**

3. Learned counsel for the Original Plaintiffs vehemently opposed the present application. He relied upon the decision in the case of ***Nitin Mahadeo Jawale & Ors. vs. Bhaskar Mahadeo Mutke***<sup>1</sup> and submitted that, trend of blaming the Advocate has been deprecated in such matters and prayed that the reason given should not be accepted by this Court.

4. The learned counsel for the Plaintiffs placing reliance on Rule 84 of Bombay High Court (Original Side Rules), 1980 stated that vakalatnama on behalf of Defendant No.1 was filed on 11.06.2021 and on a reading of Rule 84, the writ of summons is deemed to have been served on 11.06.2021 and if this date is taken, then the delay will be of more than 700 days. The learned counsel fairly brought to the notice of the Court that there is a

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1 2024 SCC OnLine 3468

conflict between Rules 84 and 87 of the Original Side Rules, 1980. Rule 87 provides for dismissal of the suit if the writ of summons is not served within six months from the date of filing of the plaint. He, therefore, submitted that the time limit for filing written statement under Order VIII Rule 1 of Civil Procedure Code, 1908 will start from 11.06.2021.

5. The learned counsel for the Plaintiffs further submitted that in case of multiple modes of service provided by the Original Side Rules, 1980, date on which the first mode was exercised should be considered as starting date for limitation. In the instant case, he submitted that although the writ of summons was served on Defendant No.1 on 08.03.2023, since the vakalatnama was filed on 11.06.2021, the starting date for limitation would be 11.06.2021. For this proposition, he relied upon the decision of the Division Bench of this Court in the case of ***Meena Ramesh Lulla and others vs. Omprakash A. Alreja & Ors.***<sup>2</sup>

6. On a query being raised by the Court, the learned counsel for the Plaintiffs replied that the copy of the plaint was served on Defendant No.1 along with writ of summons on 08.03.2023 and not prior to the said date. The learned counsel for the Plaintiffs submitted that after filing the vakalatnama in 2021, the Defendant No.1 should have applied for copy of the plaint to the office of this Court since they were aware that the proceedings have been filed against them. He submitted that the ambit of the present application is not whether the Plaintiffs want a relief in the suit, but whether the Defendant No.1 was justified in not taking steps to get the copy from the office of the Court after filing vakalatnama, so as to enable them to file the written statement.

7. The learned counsel for the Plaintiffs, therefore, prayed that the present application be dismissed.

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<sup>2</sup> 2011 SCC OnLine Bom. 2147

### **Rejoinder of the Defendant No.1:-**

8. Mr. Cama, learned counsel for the Defendant No.1 in rejoinder relied on Rule 88 of the Original Side Rules, 1980 and submitted that in suits where written statement is called for by the writ of summons, the Defendant has to file appearance within 12 weeks from the service of writ of summons and, therefore, the reliance placed on Rule 84 by the learned counsel for the Plaintiffs is misplaced. He further submitted that Rule 84 provides steps to be taken to prove service of summons. He submitted that Rule 84 would apply only if there is dispute with respect to the date on which the writ of summons was served.

### **Analysis & Conclusion :-**

9. I have heard learned counsel for the Plaintiffs and Defendant No.1. The learned counsel states that there are no precedents on the issue which arises in present matter.

10. The first issue which arise for my consideration is as to the starting point for calculating limitation period to file written statement under Order VIII Rule 1 of the Civil Procedure Code, 1908 in case of non-commercial suit and the second issue which arose is whether the reason given for the delay constitutes “sufficient cause” for condonation in filing written statement.

11. Rules 84, 87 and 88 of the Bombay High Court (Original Side Rules), 1980, read as under :-

#### ***84. Proof of service of Summons.—***

*Unless the Court shall otherwise order, the service of a Summons to appear and answer shall be proved by the vakalatnama having been filed or when no vakalatnama has been filed, by evidence showing that the Summons was served in the manner provided by the Code of*

*Civil Procedure. Such proof shall ordinarily be by the affidavit of the bailiff and (as to such matters as the bailiff cannot speak to of his knowledge) of the person who attended the bailiff for the purpose of identification at the time of service., or of such other person or persons as can speak to the identity of the person served or to other matters necessary to be proved in respect of the service.*

**87.** *Suits to be placed on board for dismissal if summons not served within [three months].—*

*If the Writ of Summons is not served within six months from the date of the filing of the plaint, the Prothonotary and Senior Master shall, unless good cause is shown, place the suit on board for dismissal. The Prothonotary and Senior Master shall notify such suits on his notice board one week before they are placed on the board for dismissal.*

**88.** *Time for filing appearance or vakalatnama by the defendant.—*

*(a) In suits where the Written Statement is called for by the Writ of Summons, the defendant shall file an appearance in person or a vakalatnama, as the case may be, within [Thirty days] from the service of the Writ of Summons.*

*(b) .....*

*(c) ....."*

12. Order VIII Rule 1 of the CPC provides that the Defendant shall within 30 days from the date of service of summons on him, present a written statement of his defence. There is no dispute between the parties that in case of conflict between the Civil Procedure Code, 1908 and the Bombay High Court (Original Side Rules), 1980, it is the Original Side Rules which would prevail. Furthermore, there is also no dispute between the parties that in so far as non-commercial suits are concerned, this Court has the power to condone the delay. There is no bar beyond which the Court cannot condone the delay.

13. The object of Order VIII Rule 1 of the CPC, which provides for written statement is to enable the Defendant to present his defence to the case made out by the Plaintiffs in the plaint. Therefore, unless the Defendant is served copy of the suit/plaint, it would not be possible for the Defendant to file his defence. Therefore, on first principle itself, the limitation provided

under Order VIII Rule 1 would start from the date of service of writ of summons which in the present case i.e. 08.03.2023 because on that date alongwith writ of summons, admittedly and undisputedly the Plaintiffs served copy of the plaint on Defendant No.1.

14. The submission of the Plaintiffs that after filing of vakalatnama on 11.06.2021 by Advocate of Defendant No.1, it was for Defendant No.1 to make application to the office of the Court and obtain the suit papers cannot be accepted. I have not been shown any provision of law or rules which states that it is for the Defendant No.1 to make application to the office of the Court and obtain the plaint/suit papers. In my view, it is the responsibility of the Plaintiffs to serve a copy of the plaint/suit on Defendant No.1 because it is the Plaintiffs who has come to the Court for a particular relief. Expecting the Defendant No.1 to make application to the office of the Court to obtain the papers of the suit, is not borne out by any provision of the law, nor any such law has been shown to me by the learned counsel for the Plaintiffs.

15. Rule 84, in my view only provides a mechanism for proving whether there is a service of summons or not. It cannot be read to mean that if the vakalatnama is filed then the writ of summons is deemed to have been served. It is a provision for proving the service of summons when there is a dispute with respect to the fact of service of summons. Rule 84 is only a Rule providing for the mode of proof and same cannot be construed to mean that if the vakalatnama is filed, then summons is deemed to have been served alongwith plaint when there is no dispute *qua* service of summons. In my view, learned counsel for the defendant is justified in placing reliance on Rule 88, which provides that in a suit where a written statement is called for by the writ of summons, the Defendant shall file an appearance in-person or the vakalatnama within 12 weeks from the service

of the writ of summons. In the present case, the written statement is called for by the writ of summons and, therefore, the filing of vakalatnama can be after the service of writ of summons. By filing a vakalatnama prior to the service of writ of summons, same cannot go against the Defendant for computing the starting period of limitation for the purpose of Order VIII Rule 1. The Form of Writ of summons also supports the case of Defendant No.1.

16. Rule 87 provides that the writ of summons has to be served within six months from the date of the filing of the plaint, and if not done so, the suit can be listed for dismissal unless good cause is shown. In my view, the phrase “.... filing of the plaint ....” read with service of writ of summons would mean that it is obligatory on the part of the Plaintiffs to serve the copy of the plaint on the Defendant, and therefore, the contention of the Plaintiffs that Defendant No.1 should have made an application to the office of the Court for obtaining the plaint cannot be accepted.

17. The reliance placed by the learned counsel for the Plaintiffs on the decision of this Court in the case of ***Forest Realty vs. Taksha Spaces Pvt. Ltd. & Ors.***<sup>3</sup> is also not applicable to the facts of the present case. The issue before the Court was whether for non-compliance of Rule 87, the suit should be dismissed because the Plaintiffs failed to serve Defendants with the writ of summons. In that case, the writ of summons was returned with the remarks “unclaimed and returned to sender” and the issue was whether in such a case, the Prothonotary was justified in dismissing the suit under Rule 87. The Court rightly held that service of writ of summons is proved because the vakalatnama was filed and, therefore, there was no requirement for re-service of writ of summons on the Defendant. In the case before me, the issue is not whether writ of summons was served or not, but

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the issue before me is what should be the starting limitation date for the purpose of Order VIII Rule 1 for filing the written statement. Therefore, in my view, this decision cannot be of any assistance nor of any support to the submission made by the Plaintiffs.

18. Similarly, reliance placed by the learned counsel for the Plaintiffs on the decision of the Division Bench of this Court in the case of ***Meena Ramesh Lulla (Supra)***, also does not take the case of the Plaintiffs any further. The counsel for the Plaintiffs has placed reliance on the paragraph 13, which only deals with the issue of proof of service of the summons and the Court on a reading of Rule 84 observed the evidence of the vakalatnama of the Advocate would show that service of the summons by the Defendant is complete. In my view, even this decision does not deal with the issue which is raised before me, since whether the service of summons is completed or not is not the issue before me. The issue which is raised in the present application is the starting point for calculating limitation under Order VIII Rule 1. Therefore, even this decision cannot be of any assistance.

19. Therefore, in my view, on a conjoint reading of Rules 84, 87, 88, and Order VIII Rule 1 and keeping in mind the objective of filing the written statement, the limitation would start from the day when the writ of summons along with the copy of the plaint/suit is served on the Defendant, which in the instant case is on 08.03.2023 and, therefore, Defendant No.1 is justified in calculating delay from the said date and the Plaintiffs is not justified in submitting that period of limitation for the purpose of Order VIII Rule 1 should start from 11.06.2021 being the date on which the vakalatnama on behalf of Defendant No.1 was filed.

20. The importance of service of writ of summons for filing written statement when vakalatnama is filed prior to such service has been

explained by the Division Bench of this Court in the case of ***Tardeo Properties Pvt. Ltd. vs. Bank of Baroda***<sup>4</sup> with specific reference to the Original Side Rules and the view taken by me is in consonance with the said decision. I am not reproducing relevant paragraphs of the said decision to burden the present order.

21. Now coming to the next issue as to whether sufficient cause is shown or not. The proviso to Order VIII Rule 1 requires the Court to record the reasons if the written statement is not filed within 30 days. In the instant case, the Defendant No.1 in para 2 of its application has explained the reason for the delay. The said reason is already explained by me above, being delay on account of the office of the Advocate. In my view, the reasons given in para 2 of the application would constitute “sufficient cause” for the delay since Defendant No.1 is the society which is run by honorary members.

22. It cannot be ruled out that there was some lapses on the part of the office of the Advocate. Merely because there is a lapse on the part of the office of the advocate same should not prevent Defendant No.1 from filing the written statement belatedly. The cause shown is sufficient for this Court to condone the delay. Litigant cannot be made to suffer on account of lapse of the Advocate moreso when the delay is only 75 days.

23. The decision of the Supreme Court relied upon by the learned counsel for the Plaintiffs in the case of ***Nitin Mahadeo Jawal (Supra)*** is distinguishable on fact. In that case the delay was of four and half years on account of the lapses on the part of Advocate and it is on the basis of this fact, the Supreme Court observed that the litigant should have been vigilant of his rights. In my view, first of all, the present Defendant No.1 is a society,

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4 2007 SCC OnLine Bom. 614

which is run by honorary members, whereas before the Supreme Court the litigant was an individual. Secondly, the delay in the present case is only of 75 days, whereas the delay before the Supreme Court was four and half years. In the instant case, before me, the office bearers of Defendant No.1 society contacted the Advocate, which shows that they were vigilant and it is only by this that the said Advocate realized that there has been a lapse on the part of his office. Thereafter, immediate steps were taken for drafting, finalizing and filing the written statement. Therefore, in my view, the decision of the Supreme Court is distinguishable on facts.

24. In view of the above, I am satisfied that the applicant has explained the delay in filing the written statement and, therefore, the delay in filing the same is required to be condoned, moreso, Defendant No.1 has not gained anything by delaying the filing of the written statement.

25. In view of above, Interim Application is allowed in terms of prayer clause (a). Registry is directed to take written statement on record.

**(JITENDRA JAIN, J.)**