

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

LAST HEARD ON: 15.05.2025

DELIVERED ON:02.08.2025

PRESENT:

THE HON'BLE MR. JUSTICE BISWAROOP CHOWDHURY

I.A. G.A. No. 3 of 2024

I.A. G.A. No. 4 of 2024

IN

C.S. No. 241 OF 2012

**ANNAPURNA COMMERCIAL COMPANY LTD VERSUS THE PRESIDENT, GANGA
JAMUNA FLAT OWNERS' ASSOCIATION AND ORS**

Appearance:

Mr. Rupak Ghosh, Adv.

Mr. Debdut Mukherjee, Adv.

Ms. Asha G. Gutgutiya, Adv.

Ms. Rituparna Das, Adv.

..... for the plaintiff

Mr. Harsh Tiwari, Adv.

Mr. Aurin Chakraborty, Adv.

Mr. Rajesh Upadhyay, Adv.

... for the defendants

Biswaroop Chowdhury, J.:



These applications GA. No-3 of 2024 and G.A. No-4 of 2024 were heard analogously for their inter connectiveness.

The defendants petitioners in G.A. No-3 of 2024 have prayed for the following reliefs:

- a) The captioned suit being C.S. No. 241 of 2012 (Annapurna Commercial Company Limited V. The President Ganga Jamuna Flat Owner's Association) pending before the Hon'ble High Court at Calcutta be taken off the file and be dismissed.
- b) All further proceedings including in any interlocutory application that may have been filed, in C.S. No-241 of 2012 pending before the Hon'ble High Court at Calcutta be stayed till the adjudication of the instant application.
- c) Ad-interim orders be issued in terms of the prayers a) and b) above.
- d) Costs of and incidental to this application be paid by the plaintiff to the petitioners/Defendants.
- e) Such further or other order (s) and/or direction(s) be given as this Hon'ble Court may deem fit and proper.

The plaintiff/petitioner in G.A. No. 4 of 2024 has prayed for the following reliefs:



- a) Delay, if any in lodging the writ of summons in respect of C.S. No 241 of 2012 be condoned.
- b) Leave be granted to your petitioner to lodge the writ of summons in the instant suit being C.S. No. 241 of 2012 for service of the same upon the respondents herein;
- c) In the alternative an order be passed waiving the requirement of formal service of summons in respect of the instant suit being C.S. No. 241 of 2012, upon the respondents and the respondents be directed to file their written statement's within such period as this Hon'ble Court may deem fit and proper;
- d) Such further and/or other order or orders be passed and/or direction or directions be given as your Lordships deem fit and proper.

As the grounds taken by the petitioner in the petition G.A. 3 of 2024 is the same as the opposition filed in G.A.-4 of 2024, and vice versa, both the applications G.A. 3 of 2024, and G.A. 4 of 2024 are discussed alongwith the arguments made by Learned Advocates in order to avoid repetition.

The petitioners/Defendant in GA-3/2024 has contended that the petitioners have come to learn of the instant suit being C.S. No. 241 of 2012 having been filed against the Defendants on or about July 2024. During this time the Advocate of the Defendants informed the defendant no-2 as well as governing body/Executive Committee of the Defendant no-3 of the pendency



of the instant suit. It is further contended that the defendant no-2 came to learn of the factum of an order of 'status quo' having been passed by this Court in the same in an interim application filed therein being I.A./G.A. No. 2 of 2024, on 19th July 2024. It is contended by the defendant no-2 that he had been duly elected and appointed as the secretary of the Defendant No-3 association only in July 2023 hence he was unaware of the litigations filed by or against Respondent/Defendant No-3 prior to that time. Upon receiving information of the pendency of the captioned suit the defendant no-2 and the Advocate representing the defendants approached the erstwhile Secretary of the Respondent No. 3 Bhupendra Gupta Advocate who had been handling the litigations of the Defendant no-3 during his time in that office. Mr. Gupta handed over the papers in the captioned suit.

Upon perusal of the case papers the following facts were noticed by the defendant no-3.

- A. An application being G.A. No-1929 of 2012 (later renumbered as GA 1 of 2012) had been filed and directions for Affidavit given on 27th August 2012. The affidavits were exchanged and on 7th July 2014, the application GA-1/2012 was dismissed for default.
- B. Upon causing search at the Website of High Court it appeared that from 8th July 2014 the day of dismissal of G.A.-1/2012 for default till 31st August 2020 no orders whatsoever had been passed in the suit during that period.



- C. Resultantly it is apparent that the captioned suit had been in a state of suspended animation or dormant from 14th July 2014 to 19th July 2024. In fact only the applications in connection with the captioned suit have ever been heard by this Court. The captioned suit has not progressed at all from the stage of institution in any way since the date of institution ie. 12th July 2012.
- D. Finally in order to ascertain whether the Writs of Summons of the captioned suit had ever been lodged with the Sheriff for service thereof, the Defendant's Advocate wrote a letter dated 23rd August 2024, to the Deputy Sheriff of this Hon'ble Court, inter alia, seeking information on whether the writs of summons had been lodged in the captioned suit. The reply dated 03rd September 2024, given by the Deputy Sheriff revealed that no Writs of Summons had ever been lodged with the said office for service of the same upon the Defendants.
- E. Neither the plaint of the captioned suit and nor the Writs of Summons thereof have been served on the Defendants from the date of institution of the captioned suit ie. 12th July 2012, till 03rd September 2024, ie, the date on which the aforementioned reply was given by the Deputy Sheriff. In fact the Defendants have never entered appearance in the captioned suit by filing a Vokatnama for that purpose due to them having never received the Writs of Summons. The Defendants have merely appeared in and contested



the aforesaid applications connected to the captioned suit by filing separate Vokatnama in respect of each such application.

The petitioner/Defendants have contended that the Defendants have not in any way waived their right to be served with the Writs of Summons of the Captioned suit. It is further contended that the period of 14 days from the date of institution of the captioned suit ie. 12th July 2012 for lodging the Writs of Summons with the office of the sheriff has long expired.

Such period has not been extended in any way whatsoever by an application of the plaintiff and nor is an application of that nature pending for as revealed by the case status referred to hereinabove, no applications whatsoever have ever been filed by the plaintiff apart from the two applications referred to previously. It is also contended that the limitation period of three years from the date of institution of the captioned suit ie. 12th July 2012 for lodging of the Writs of Summons has also long expired.

The petitioners submit that due to the failure of the plaintiff in causing for and/or facilitating the service of the Writ of Summons upon the Defendants of the captioned suit the same is liable to be taken off the file and dismissed.

In the application G.A. 4/2024 taken out by the plaintiff the contentions of the plaintiff may be summed up thus:



- A. The plaint was verified and affirmed by one Anand Kumar Dhanuka who was one of the Directors of the petitioner Company. The said Mr. Dhanuka was authorised by the Board of Directors of the company to institute the said suit. Mr. Dhanuka used to look after the litigations of the petitioner. In such process Mr. Dhanuka was assisted by one Badri Prasad Agarwal since deceased.
- B. After institution of the suit the petitioner also filed an application being G.A. No. 1929 of 2012 praying for injunction and appointment of Receiver. In the said application by an Order dated August 27, 2012 an undertaking given by the Learned Advocate for the respondents was recorded and parties were directed to exchange affidavits. The parties thereafter exchanged affidavits. Subsequently the application was dismissed by order dated July 7, 2014.
- C. The petitioner has come to know from erstwhile advocate on record that during the course of hearing of the said application a copy of the plaint which leave was sought for was in fact handed over to the respondent's advocate on record in court thus the respondents were thus well aware of the pendency of the suit.
- D. Subsequently it transpired that the writ of summons were although filed on time with the plaint but was not lodged in respect of the above suit for service of the same upon the respondents herein.



- E. Such omission is not deliberate on the part of the petitioner and the petitioner does not stand to gain from such omission. The petitioner has already paid the Court fees to the tune of Rs. 50,000/- and has incurred substantial litigation expenses.
- F. The petitioner initially engaged MS. Sanyamtani Shaw as its Advocate who instituted the suit on behalf of the petitioner and to the best of knowledge of the deponent the petitioner never received any advice with regard to lodging of the writ of summons. The petitioner had no knowledge of such legal requirement for lodging writ of summons.
- G. Mr. Dhanuka wasn't able to look after the instant litigation for long since he suffered from cancer. In fact, the aforesaid Mr. Dhanuka resigned as a director of the petitioner Company on March 20, 2015. Mr. Badri Prasad Agarwal who also used to look after the litigation of the petitioner company died on December 7, 2017. Upon the death of Badri Prasad Agarwal, his son Sushant Kumar Agarwal started looking after the litigations of the petitioner company.
- H. Although Sushant Kumar Agarwal was aware of the pendency of the instant suit but was unaware that the writ on summons in the instant suit had not been lodged for service thereof upon the respondents.



- I. No progress was made in the suit in the last 12 years as the erstwhile Learned Advocate of the petitioner misguided the petitioner about formal lodging writ of summons over and above the service thereof by hand.
- J. Despite Service of such application the respondents remained unrepresented before the Court on July 19, 2024.
- K. The omission to lodge the writ of summons was neither deliberate nor attributable to the petitioner.

Heard Learned Advocates for the Plaintiff and Learned Advocate for the defendants. Perused the petitions filed and materials on record.

Learned Advocate for the defendants submits that it is an admitted fact that the Writ of Summons for service, with a copy of the plaint upon the Defendants by the Sheriff of this Hon'ble Court has not been lodged by the plaintiff. Learned Advocate further submits that the plaintiff's application is the subsequent application. It was filed after the Defendant's application wherein the 12-year delay in the lodging of the Writ of Summons was pointed out that too after a significant delay.

With regard to the contention of the plaintiff that the Defendants were served with the plaint when G.A. 1929 of 2012 was heard and contested Learned Advocate submits that the contention is not borne out from record and is a mere bold statement. Learned Advocate further submits that if service would have been effected during the hearing of the said prior



application on 27th August 2012 then the order of I.P. Mukerji (as His Lordship then was) would have reflected as such which it does not. Learned Advocate also submits that if service would have been effected otherwise, then in adherence to the conventions of the original side of this Court the same would have been served under a cover letter, with an endorsement of receipt by or on behalf of the Advocate on-record of the Defendants being made on the office copy of such letter. The plaintiff's pleadings does not contain any such letter and it merely asserts that the Plaintiff has otherwise served the plaint on the Defendants.

With regard to the contention of the plaintiff that plaintiff's were not aware about the legal provisions regarding lodging of the writ of summons Learned Advocate submits that these contentions have no basis and are flimsy. The Latin maxim states Ignorantia Juris non excusat or the law does not excuse ignorance of the law.' It also does not excuse lapses on the part of an Advocate of the plaintiff.

With regard to the contention of the plaintiffs that the Defendants were aware of the pendency of the instant suit in connection with the proceedings G.A. No.1929of 2012 Learned Advocate submits that the said contentions cannot be sustained on the following grounds;

Firstly as shown hereinbelow the Defendants by merely appearing in the previous application of the plaintiff have not waived the right to be served with the Writ of Summons. This is especially the case due to the fact



that the plaint was not annexed to the interlocutory application filed by the plaintiff.

Secondly while the Defendants were aware of the pendency of the suit when they appeared in the previous application of the plaintiffs they were unable to enter appearance in the suit. A defendant in the original side can only enter appearance in a suit in response to a writ of summons by filing with the Registrar on or before the day fixed for appearance a memorandum under Rule 15, Chapter VIII of the Original side Rules. Hence knowledge of the pendency of the instant suit does not excuse the plaintiff of its obligations under Rule 6 chapter VIII of the original side Rules to lodge the Summons with the sheriff's office within 14 days from the presentation of the plaint in the suit. Without the Writ of Summons being lodged and then served by the sheriff the Defendants could not have and in the instant case have not been able to defend themselves and appear in the instant suit. The plaintiff has conducted the instant suit in an extremely lackadaisical manner.

Learned Advocate for the Defendants have relied upon the decision in the case of State Bank of India V Tarit Applications (P) Ltd, reported in 1993 SCC Online Cal-129 passed by a Learned Single Bench of this Court. In the said case it was observed as follows:

'19. That the general power to extend time exists is indisputable. The same can co-exist with a period of limitation also. The writ of summons is to



be got issued and lodged within 14 days from the filing of the plaint. One can conceive of many such applications for extension of time made on dates which occur after those 14 days but prior to the lapse of three years therefrom. In my opinion, therefore, the general power under Chapter XXXVIII rule 46 cannot be used or invoked so as to get rid of the bar of limitation altogether.

20. Mr. Maitra submitted on the authority of a learned Single Judge of the Allahabad High Court in the case of Sri Nath Agarwal, reported in AIR 1981 All 400 that if the defendants have knowledge of the suit alinude, and have taken part in interlocutory applications, then they cannot ask for dismissal of the suit in any event. Mr. Mitra urged on this basis that the defendants would in that event must be taken to have waived their rights as to the service of writ of summons.

21. Interlocutory proceedings in this suit there certainly were. Admittedly injunctions have been passed, which were confirmed in relation to property which did not form the security of the Bank but which were the alleged personal property of the defendants 2 and 3. The said defendants appeared in these interlocutory proceeding also. But nowhere from the records can anything be spelt out wherefrom it can be held that these defendants or any of them waived their rights with the writ of summons in due course. The deliberate relinquishment of the known right of their must



be spelt out from some action or statements of the defendants themselves and those action and/or statements are wholly absent herein.

22. I am aware that the success of the two defendants in these applications would mean their success in the suit. It would also mean that the plaintiff Bank would for ever be barred from looking to these defendants for satisfaction of their claims. However, the court is not free to write a different Code of Civil Procedure or a different set of High Court Rules or a different Act of Limitation than those that prevail for determination of the rights and liabilities of any of the litigants in this country, be they public bodies or private individuals. I am not free to view with any particular laxity the situation that prevails to day because by doing so I might perhaps be saving the claim of a Bank against alleged guarantors. If the law clearly indicate one way, and the rights, whatever the consequence might be.'

Learned Advocate submits that the plaintiffs' application deserve to be dismissed, as the delay in lodging the Writ of Summons is admittedly more than 3 (three) years.'

Learned Advocate further submits that if the decision of NPR Finance is to be followed poorly explained delay can be condoned upon awarding of exemplary costs.

Learned Advocate also relies upon the following Judicial decision.

Bhairu Ratan Pachisia and ors VS International Club and ors.



Reported in 2007 SCC online Cal-690.

In the case of Bhairu Ratan Pachisia the Hon'ble Court observed as follows:

'84. The proposition of law that emerges from the judgments of the Supreme Court, relied upon by Mr. Maitra, is that the Court has power to extend the time stipulated in the Civil Procedure Code, for an act, in appropriate cases, to prevent injustice, subject to the laws of limitation.

85. None of the precedents cited by Mr. Maitra are an authority for the proposition that the Court should always extend the time for an act, notwithstanding the conduct of the concerned party. On the other hand, in the second *Salem Advocate Bar Association* case (supra) the Supreme Court has cautioned the Courts against indiscriminate extension of time. Laches cannot be condoned.

86. In the instant case there appears to be no explanation at all for the delay in taking out the writ of summons except for the weak excuse of the department taking time over scrutiny of the plaint. The plaintiff and/or his advocate knowing fully well that the plaint was to be lodged within 14 days for service of writ summons, did absolutely nothing. No application for extension of time was made till after three years from the date of expiry of the time to lodge the writ of summons, and after the petitioner had applied for dismissal of the suit. Not a single letter was written to the concerned



employees/officials of the department or to the Registrar Original Side of the Court, requesting him to expedite scrutiny of the plaint.

87. It is true that this Court would not allow justice to be defeated by reason of laches of the department or its staff. It is, however, patently clear that the story of delay in scrutiny of the plaint, is nothing but an afterthought. The allegations are not supported by any materials on record.

88. There are no ground for extension of time for delivery of the writ of summons to the Sheriff. Extension of time, at this stage, would render the provisions of Rule 6 and 7 of Chapter VIII of the Original Side Rules nugatory. Moreover, as observed above, there was no application for extension of time within the period of limitation of 3 years, as observed above. The application being G.A. 1545 of 2006 thus succeeds.

The order of the Master dated 24th July, 2006 having been set aside and quashed, the suit is dismissed.'

Learned Advocate for the plaintiff submits as follows:

A. Although the plaintiff had filed the writ of summons with the plaint, the same was not lodged owing to lack of advice of its Learned Advocate on Record. In any event the defendants were all along been aware of the pendency of the suit and the application but chose not to take any steps for filing the written statement.



- B. The persons who looked after the suit on behalf of the plaintiff ie. Mr. Dhanuka and Mr. Agarwal had resigned from the Board of Directors and died respectively which caused a further lack of communication.
- C. The plaintiff has incurred considerable expenses for the suit including having paid the full court fees.
- D. It was only after the plaintiff filed IA GA No. 2 of 2024, and obtained an interim order on 19.07.2024 with regard to maintenance of status quo on the title and possession of the property in question that the defendants took the technical point of non-service of writ of summons despite being aware of the pendency of the suit and applications.
- E. There was no wilful delay or negligence on the part of the plaintiff in lodging the writ of summons which was filed along with the plaint.

Learned Advocate relies, upon the decision of the Hon'ble Division Bench in the case of NPR Finance Ltd V Deepak Jhunjhunwala reported in 2014 SCC Online Cal-9623.

The Hon'ble Division Bench in the case of NPR. Finance Ltd observed as follows:

The object of service of summons on the defendant is to make him aware that a suit has been filed against him. If the defendant is otherwise



aware of the institution of the suit eg. by reason of participation in interlocutory proceeding or any parallel proceeding, the gravity of non-service or unduly delayed service of writ of summons would obviously be mitigated. In some cases it may happen that due to prolonged terms of settlement between the parties, the plaintiff has refrained from taking steps for service of writ of summons on the defendant. In such cases also the conduct of the plaintiff would not be so deplorable as to punish him by dismissing his suit.”

Learned Advocate submits that on the ratio of NPR Finance Ltd. four appeals were disposed by the Hon’ble Division Bench by permitting the plaintiff to lodge writ of summons after a delay of 6 years. Learned Advocate further relies upon the decision of Hon’ble Full Bench of this Court where the Hon’ble Bench in the case of Hindustan Motors LTD VS National Insurance CO. Ltd observed as follows:

‘Question now remains if the Court can dismiss a suit for laches on the part of the plaintiff in taking steps in the suit, can the Court condone such laches being satisfied with the cause which prevented the plaintiff from taking any such steps?

Our answer would be ‘yes’ (Emphasis Supplied). In this regard let us consider the latest Apex Court decision in the case of Salem Bar Association (supra). In the said case the Apex Court considered the Provision of Order 7 Rule 11 clause C. Such provision was incorporated enabling the Court to



reject a plaint when it fails to comply with the provisions of Order 7 Rule 9. The Apex Court observed that such was the enabling provision and the Court should ordinarily give an opportunity for rectifying such defect meaning thereby for procedural latches the Court should not dismiss the suit as a matter of course without giving an opportunity for curing the defect. In a recent decision of the Apex Court in the case of Uday Shankar Triyer (supra) the Apex Court considered the provision of Order 41 Rule 1 which obligates appellants advocate to sign the Memorandum. The Apex Court observed the non-compliance did not entail automatic rejection without giving an opportunity to rectify such defect.’

Considering the Apex Court decision referred to above we are of the view that when the Court has power to dismiss the suit for procedural irregularity the Court should have equal power to condone such delay by giving opportunity to the plaintiff for curing such defect. The basic concept in our view is that procedural latches should not take away the substantive right of a litigant be it his own latches or be it latches on the part of his advocate.”

Learned Advocate further submits that the Judgment of Triat Appliances was also considered by the Hon’ble Full Bench in the case of Hindustan Motors and the Hon’ble Bench observed as follows:

‘Mr. Sen heavily relied on the decisions of learned Single Judge in the case of state Bank of India VS Triat Appliances Private Limited and Ors



(supra). The said decision was based upon the Allahabad High Court judgment which was overruled by the Apex Court referred to above.”

Before considering the material in ISSUE it is necessary to consider the provisions contained in Rule 2A of Chapter VII, Rule 2A and 2B Rule 6 and Rule 15 of Chapter VIII, of the Original Side Rules which are as follows:

Chapter VII Rule 2A.-Copies of Summons to accompany plaint-when a plaint is presented for admission it shall be accompanied by the requisite number of Printed forms of writs of summons, duly filled up as mentioned in Rule 2A of Chapter VIII and duly stamped:

Provided that this rule shall not apply to a case where a plaint is presented before this Court after its returns from another Court and in which a date for appearance of the parties before this Court has been fixed by the other Court at the time of returning the plaint.

Rule 2A Chapter VIII. Preparation of Writ of Summons-Printed forms of Writs of summons may be obtained from the Registrar by any intending plaintiff or any Advocate acting on the Original side shall at the time of presenting a plaint produce therewith a sufficient number of copies of such forms to provide for one original writ of summons and two copies for service on each defendant. In each of such forms shall have been copied at the proper spaces left blank for the purpose-1) the full title of the suit as appearing in the plaint and 2) the nature of the suit in the exact words of



the concise statement. The remaining blanks shall be filled up in the Registrar's Office in the manner provided for in this chapter. The plaintiff or his Advocate acting on the original side shall be responsible for the correctness of the portions caused to be copied by him. The Advocate acting on the Original Side fee for copying into the form shall be six annas per folio.

2B. Annexures to the Writ of Summons: Each copy of the Writ of Summons in Form Nos 2 and 3 for service on each defendant shall have annexed thereto a copy of the plaint and of every document issued on a copy of which is filed therewith. The plaintiff or his Advocate acting on the Original Side shall be responsible for the correctness of such copy or copies and the Advocate acting on the Original Side charges therefor shall be allowed in accordance with item 13 Rule 91 of Chapter XXX VI.

Rule-6-Summons to be delivered to the sheriff within 14 days- Except as hereinafter provided every writ of summons shall be taken out and delivered to the sheriff for service within the local limits of the jurisdiction of this Court or for transmission for service elsewhere. A Writ of Summons shall have annexed thereto a copy of the plaint and of every document sued on, a copy of which is filed therewith. Unless an extension of time is obtained it shall be taken out and delivered to the sheriff within 14 days from the filing of the plaint or the date of the order of amendment. Unless otherwise ordered the writ of summons required to be served by registered



post under provision of Rule 19A of Order V of CPC shall be served in all cases by the sheriff of Calcutta.

Rule-15. Entering appearance to a writ. A defendant shall enter his appearance to a writ of summons by filing with the proper officer in the office of the Registrar on or before the day fixed for his appearance in to writ a memorandum in writing dated on the day of its delivery and containing the name and place of business of the defendant's Advocate acting on the Original Side or stating that the defendant defends in person and containing his name and place of residence. (Form Nos 4 and 5).

Upon considering the provision contained in Rule 15 of Chapter VIII of the Original Side Rules it is clear that the duty of the defendant to appear in the suit is on receipt of the Writ of summons. The period within which he must appear in the suit and file written statement is also as per the Writ of Summons. Hence it cannot be construed that the defendant may appear without service of writ of summons or dispensing with the service of writ of summons.

Thus it is incumbent to deliver the writ of summons to the sheriff within 14 days from the date of institution of the suit. Although the period for delivering the summons to the sheriff is provided under Rule 6 and 8 of Chapter VIII but the Court can extend the same by specific Order as provided under Rule 7.



There is also no specific provision that non compliance of the provision of Rule 6 of Chapter VIII will result in dismissal of the suit.

Where Rule is silent about the effect of non-compliance of any provision enlightenment can be obtained from Judicial decisions or from the provisions of other statutes having similar provisions. As the Rules do not provide consequential provisions in case of non compliance of Rule 6 Chapter VIII it is necessary to consider Judicial Pronouncements on this issue.

In the decisions of Hindustan Motors Ltd (supra) and NPR Finance Ltd (supra) relied upon it was observed that Courts should take a liberal view in condoning the delay and laches of either the plaintiff or his Advocate in not delivering the Writ of summons to the sheriff within 14 days. Moreover the Rules do not provide that non-compliance of Rule 6. Chapter VIII will result in the dismissal of the suit.

Now if we enlighten ourselves from the provision contained in Order 7 Rule 11 (e) it will appear that that the Amended Provisions with regard to High Court Calcutta is as follows:

11. e) Where any of the Provisions of rule 9(1A) is not complied with and the plaintiff on being required by the Court to comply therewith within a time to be fixed by the Court fails to do so



the plaint shall be rejected. Order 9 Rule 9(1A) provides as follows:

Rule 9 (1A). The plaintiff shall present with his plaint-

- i) As many copies on plain papers of the plaint as there are defendants unless the Court by reason of the length of the plaint or the number of the defendants, or for any sufficient reason permits him to present a like number of concise statement of the nature of the claim made or of the relief claimed in the suit, in which case he shall present such statements.
- ii) Draft forms of summons and fees for the service thereof.

Thus upon reading Order 7 Rule (11) (e) as amended in Calcutta it will appear that when there is non-compliance of Rule 9(1A) Order VII and the plaintiff on required by Court to comply the same within the period fails to do the plaint shall be rejected.

Although Chapter VIII of Original Side Rules does not contain any provision for dismissal of suit for non-compliance of Rule 6 but the principles of Order 7 Rule 11(e) as amended can be adapted and Courts may permit the plaintiff to deliver summons after the period as prescribed under Rule-6. Chapter VIII and direct him to do within a specified period and in default dismiss the suit. It is also well settled that when Courts have power to dismiss suit for defect or any default, Court has also power to condone



the same after permitting the defect to be cured. As procedures are handmaid of justice and meant to advance justice rigid view should not be taken in case of non-compliance of procedure.

In the instant case there is no dispute with regard to filing of summons with the plaint as provided under Rule 2A Rule 2B of Chapter VIII of the Original Side Rules. It is only non compliance of Rule VI by not delivering the summons to the sheriff within 14 days of the institution of the suit. A Plaintiff after he has engaged an Advocate to institute the suit upon institution of the suit has no role to play regarding delivery of summons as per Rule 6 to the sheriff. This function is discharged by Learned Advocate for plaintiff which is not under the supervision of the plaintiff. Thus the plaintiff should not suffer for laches of his Advocate, as an Advocate is part of the Institution for Delivery of Justice.

It is true that the period of limitation to move any application where no specific period is provided is 3 years but that does not fetter the hands of the Court in entertaining the application after the prescribed period if there are grounds.

In the case of N. Balakrishnan VS M. Krishnamurthy reported in AIR-1998 the Hon'ble Supreme Court observed as follows:

'9. It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion



can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

10. The reason for such a different stance is thus:

The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. The time-limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause.

11. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a



lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim *interest reipublicae up sit finis litium* (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.’

In the instant case the plaintiff did not sit idle after institution of the suit as there were interlocutory applications moved. Further the plaintiff has been able to show that due to illness and resignation of one of the Directors and death of another Director Plaintiff failed to take necessary steps. Moreover the Defendants are not able to establish any malafide intention on the part of the plaintiff. Thus the plaintiff is able to make out a case for condonation of delay and permission to lodge writ of summons upon, the defendants. However considering the facts of the case costs should also be imposed and Rs. 50,000/- costs is just and reasonable in the opinion of this Court.



Thus G.A. 4/2024 stands allowed Let there be an Order in terms of prayer a) and b) of Notice of motion dated 7th October 2024. This Order is subject to the payment of costs of Rs. 50,000/- out of which 40,000/- shall be paid by the plaintiff to Defendants and Rs. 10,000/- to High Court Legal Service Committee within 2 weeks.

G.A. 3/2024 stands dismissed.

(Biswaroop Chowdhury, J.)