

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 17428 OF 2025

1. Minesh Anup Kumar Dhakan
Adult, Aged 50 years, Indian
Inhabitant, Occ: Business,
Residing at Flat No. 3, Janki Niwas,
Bhikaji Lad Marg, Behind Jain
Temple, Dahisar (W), Mumbai – 400 068
2. Nitesh Anup Kumar Dhakan
Adult, Aged 49 years, Indian
Inhabitant, Occ : Business,
Residing at Flat No. 3, Janki Niwas,
Bhikaji Lad Marg, Behind Jain
Temple, Dahisar (W), Mumbai – 400 068. ...Petitioners

Versus

1. Suresh Issardas Nichani
Adult, Indian Inhabitant, Residing
at Flat No. 602, 6th Floor in
Building No. 4, Shree Giriraj Co. Op.
Housing Society Ltd., C.S. Road No. 5,
Rajendra Complex, Anand Nagar,
Dahisar (East), Mumbai – 400 068.
2. Kavita Suresh Nichani
Adult, Indian Inhabitant, Residing
at Flat No. 602, 6th Floor in
Building No. 4, Shree Giriraj Co. Op.
Housing Society Ltd., C.S. Road No. 5,
Rajendra Complex, Anand Nagar,
Dahisar (East), Mumbai – 400 068.
3. Shailesh Vora
Adult of Bombay Indian Inhabitant,
Residing at Shop No. 1, Giriraj Building,
C.S. Road No. 5, Rajendra Complex,
Anand Nagar, Dahisar (East),
Mumbai – 400 068.

4. Shree Giriraj Co-op. Housing
Society Ltd., registered under
Maharashtra Co-operative Society Act,
1960, CTS No. 1542, CTS Road No. 5,
Rajendra Complex, Dahisar (E),
Mumbai 400 068. ...Respondents

Mr. Saif Dingankar, a/w Tejjas Shah, Mr. Akshay Chorge, for
the Petitioner.

Mr. Tushar Gujjar a/w Ms. K Kothari i/b SL Partners, for
Respondent Nos. 1 & 2.

CORAM : N. J. JAMADAR, J.
RESERVED ON : 24th MARCH 2026
PRONOUNCED ON : 08th JUNE 2026

JUDGMENT:

1. Rule. Rule made returnable forthwith, and, with the
consent of learned Counsel for the parties, heard finally.

2. This petition under Article 227 of the Constitution of
India, calls in question the legality, propriety and
correctness of an order dated 09th May, 2025 passed in
Notice of Motion No. 74/2021 whereby the learned Judge,
City Civil Court dismissed the Notice of Motion taken out
by the petitioners-original defendants to the counter-claim
to condone the delay of 12 years in filing the written
statement to the counter-claim and additional counter-

claim, and strike off the additional counter-claim filed by the original defendants-Respondent Nos. 1 and 2.

3. The petitioners-original plaintiffs had instituted Suit No.3381/2006 before this Court seeking, *inter alia*, specific performance of the contract to sell the suit property as evidenced by the agreement dated 07th October, 2005. In the said suit, the respondents/defendants filed written statement and a counter-claim as well, being Counter-Claim No. 01/2007, on 22nd January, 2007. In the wake of enhancement of the pecuniary jurisdiction of the City Civil Court, the Suit No. 3381/2006, came to be transferred to the City Civil Court, Bombay and re-numbered as Short Cause Suit No. 7401/2006.

4. In the year, 2016, the plaintiffs filed Chamber Summons No. 342/2016 seeking amendment in the plaint. By an order dated 28th September, 2016, the said chamber summons was allowed. In response thereto, the defendants filed additional written statement and additional counter-claim, on 07th September, 2017. The defendants had not however taken any steps to register Counter-Claim

No.01/2007, before the City Civil Court, though the City Civil Court had highlighted the said issue.

5. The plaintiffs claim, when the plaintiffs started making preparation for adducing the evidence, it transpired that, the erstwhile advocate of the plaintiffs had not filed a written statement to the counter-claim filed by the respondents, in the year 2007. The plaintiffs were under a bonafide impression that, the erstwhile advocate of the plaintiffs-defendants to the counter-claim, had filed written statement to the counter-claim as well as additional counter-claim. Therefore, the plaintiffs took out the Notice of Motion No. 74/2021 seeking condonation of delay in filing the written statement to the Counter-Claim No. 01/2007 and also to the additional counter-claim. The plaintiffs also prayed for striking off the additional counter-claim filed on behalf of the respondents.

6. By the impugned order, the learned Judge, City Civil Court was persuaded to dismiss the Notice of Motion observing that, there was no justifiable reason to condone the delay of 12 years in filing written statement to the counter-claim. The only reason which was sought to be

ascribed by the plaintiffs was that, they were under an impression that, the advocate for the plaintiffs had filed the written statement and on account of the inadvertence on the part of the said Advocate and lack of communication, written statement to the counter-claim could not be filed. Such explanation, in the view of the learned Judge, City Civil Court, did not commend itself for condonation of huge delay of 12 years in filing the written statement. Nor any case was made out to strike off the additional counter-claim filed in response to the amendment in the plaint.

7. I have heard Mr. Saif Dingankar, the learned Counsel for the petitioners, and Mr. Tushar Gujar, the learned Counsel for Respondent Nos. 1 and 2. With the assistance of the learned Counsel for the parties, I have also perused the material on record.

8. Mr. Dingankar, the learned Counsel for the petitioners/plaintiffs, urged that, the Counter-Claim No. 01/2007 filed by the defendants was not registered after the suit came to be transferred to the City Civil Court, Greater Bombay. The learned Judge, City Civil Court in the roznama of the proceedings dated 03rd April, 2018, had

clearly recorded that, though the Counter-Claim No. 01/2007 was filed before the High Court, yet, the same was not registered and, therefore, the Defendant Nos. 1 and 2 were directed to register the counter-claim. However, the Defendant Nos. 1 and 2 had failed to take necessary steps to register the counter-claim. Thus, the learned Judge, City Civil Court was in error in holding that, the plaintiffs had not offered satisfactory explanation for the condonation of delay in filing the written statement to the counter-claim.

9. In opposition to this, Mr. Gujjar, the learned Counsel for Respondent Nos. 1 and 2, would submit that, in the affidavit in support of the Notice of Motion, no ground has been made out, for condonation of such huge delay of 12 years in filing the written statement to the counter-claim. It was not the case of the plaintiffs that, the Counter-Claim No. 01/2007 was not served on the plaintiffs. In any event, the prayer for the condonation of delay in filing the written statement to the counter-claim and additional counter-claim is irreconcilably inconsistent with the prayer to strike off the additional counter-claim dated 22nd January 2007.

10. The facts appear to be explicitly clear. On the aspect of the filing and service of written statement along with counter-claim on 09th April, 2007, the letter dated 09th April, 2007 (Exh. C to the petition) clearly records that, the then advocate for the plaintiffs had received the copies of the written statement and counter-claim, on 09th April, 2007, itself. The counter-claim was registered as CC No. 01/2007 in Suit No. 3381/2006. The suit, on the own-showing of the plaintiffs, came to be transferred to the City Civil Court, in the year 2012. By the time, the suit thus came to be transferred to the City Civil Court, a period of more than 5 years had elapsed since the filing of the Counter-Claim No. 01/2007. It is not the case that, during the said period, while the suit was subjudice before this Court, any effort was made by the plaintiffs to file written statement to the Counter-Claim No. 01/2007.

11. On the legal premise, in view of the provisions contained in Order VIII Rule 6-A (4), the counter-claim is required to be treated as a plaint and governed by the rules applicable to plaints. Rule 9 of Order VIII provides that, there shall be no pleadings subsequent to the written statement of a defendant other than by way of defence to

set-off or counter-claim, except by the leave of the Court, and upon such terms as the Court thinks fit. The counter-claim is, in a sense, a cross-suit. The purpose of the provision enabling filing of a counter-claim is to avoid multiplicity of judicial proceedings and save upon the Court's time as also to avoid the inconvenience to the parties by enabling claims and counter-claims, i.e. all disputes between the same parties being decided in the course of the same proceedings. [*Ramesh Chand Ardawatiya Vs. Anil Panjwani* ¹]

12. In the case of *Ashok Kumar Kalra Vs. Wing Cdr. Surendra Agnihotri & ors.*², a three-Judge Bench of the Supreme Court *inter alia* observed that, the counter-claim shall be treated as a plaint and governed by the rules applicable to plaints. Order VIII Rule 6-G states that, the rules relating to a written statement by a defendant shall apply to a written statement filed in answer to a counter-claim. The time limit for filing of the counter-claim, is not explicitly provided by the legislature, rather only limitation as to the accrual of the cause of action is provided. The

1 (2003) 7 SCC 350

2 (2020) 2 SCC 394

right to file a counter-claim in a suit is explicitly limited by the embargo provided for the accrual of the cause of action under Order VIII Rule 6-A. There cannot be any hard and fast rule to say that in a particular time the counter-claim has to be filed, by curtailing the discretion conferred on the courts. The trial court has to exercise the discretion judiciously and come to a definite conclusion that by allowing the counter-claim, no prejudice is caused to the opposite party, process is not unduly delayed and the same is in the best interest of justice and as per the objects sought to be achieved through the amendment. But, however, the Court was of the considered opinion that, the defendant cannot be permitted to file counter-claim after the issues are framed and after the suit has proceeded substantially.

13. The three-Judge Bench thus postulated that Order VIII rule 6-A of CPC does not put an embargo on filing the counter-claim after filing the written statement, rather the restriction is only with respect to the accrual of the cause of action. That, however, does not give an absolute right to the defendant to file the counter-claim with a substantial delay, even if the limitation period prescribed has not

elapsed. The Court has to take into consideration the outer limit for filing the counter-claim, which is pegged till the issues are framed.

14. Reverting to the facts of the case at hand, in view of the express provisions contained in Order VIII Rule 6-G, of the Code, 1908, the rules relating to filing a written statement by a defendant govern the written statement filed in answer to a counter-claim. It was, therefore, incumbent upon the plaintiffs/defendants to the counter-claim to file written statement within the time stipulated under the provisions of Order VIII Rule 1 of the Code, 1908. Undoubtedly, the proviso to Order VIII Rule 1 of the Code, 1908 prescribing the outer limit of 90 days from the date of service of summons for filing the written statement, has been construed to be directory and not mandatory. However, it is incumbent upon the defendant to the counter-claim to ascribe a sufficient cause for not preferring the written statement to the counter-claim within the stipulated period. Lest, the very purpose of prescribing the time limit for filing the written statement, be that to the suit or the counter-claim, would be completely defeated.

15. In the case at hand, the delay is of almost 12 years. The learned Judge, City Civil Court, was justified in holding that, the only reason ascribed in the application for condonation of 12 years delay in filing the written statement to the counter-claim was that, the erstwhile advocate of the plaintiffs did not diligently advise the plaintiffs to file the written statement to the Counter-Claim No. 01/2007. In substance, the blame was sought to be laid at the doorstep of the erstwhile advocate.

16. In the aforesaid context, the learned Judge, City Civil Court extracted the following observations of the Supreme Court in the case of *Nitin Mahadeo Jawale & ors. Vs. Bhaskar Mahadeo Mukte*³ :

“6. We have noticed over a period of time the growing tendency on the part of the litigants in throwing the entire blame on the head of the advocate. Not only this, we have come across cases where the concerned advocate has filed an affidavit in favour of his client(s) saying that he was unable to attend the proceedings due to some personal reasons difficulties thereby facilitating the litigant to get the delay condoned.

7. Even if we assume for a moment that the concerned lawyer was careless or negligent, this, by itself, cannot be a ground to condone long and inordinate delay as the litigant owes a duty to be vigilant of his own rights and is expected to be equally vigilant about the judicial proceedings pending in the court initiated at his instance.

8. The litigant, therefore, should not be permitted to throw the entire blame on the head of the advocate and thereby disown him at any time and seek relief.”

(emphasis supplied)

17. The afore-extracted observations are on all four with the facts of the case at hand. The thrust of the submission on behalf of the plaintiffs was that they were under an impression that their erstwhile advocate had filed the written statement to Counter-Claim No. 01/2007. That explanation does not necessarily imply that, the plaintiffs claimed that they had prepared the written statement and entrusted the same to the erstwhile advocate for filing the written statement to the counter-claim. At any rate, the explanation, even if taken at par, does not appeal to human credulity, especially when the copy of the counter-claim was served on the advocate for the plaintiffs on 09th April, 2007, itself.

18. A profitable reference in this context can be made to a three-Judge Bench judgment of the Supreme Court in the case of *R. N. Jadi & Brothers & ors. Vs. Subhashchandra*⁴, wherein the approach of the Court in the matter of condoning the delay in filing the written statement was expounded. The observations of Hon'ble Justice *P. K. Balasubramanyan*, in the supplementary opinion, are instructive and, hence, extracted below :-

“14. It is true that procedure is the handmaid of justice. The court must always be anxious to do justice and to prevent victories by way of technical knock-outs. But how far that concept can be stretched in the context of the amendments brought to the Code and in the light of the mischief that was sought to be averted is a question that has to be seriously considered. I am conscious that I was a party to the decision in *Kailash vs. Nankhu and others* (2005 (4) SCC 480) which held that the provision was directory and not mandatory. But there could be situations where even a procedural provision could be construed as mandatory, no doubt retaining a power in the court, in an appropriate case, to exercise a jurisdiction to take out the rigor of that provision or to mitigate genuine hardship. It was in that context that in *Kailash vs. Nankhu and others (supra)* it was stated that the extension of

4 (2007) 6 SCC 420

time beyond 90 days was not automatic and that the court, for reasons to be recorded, had to be satisfied that there was sufficient justification for departing from the time limit fixed by the Code and the power inhering in the court in terms of Section 148 of the Code. Kailash (supra) is no authority for receiving written statements, after the expiry of the period permitted by law, in a routine manner.

15. A dispensation that makes Order VIII Rule 1 directory, leaving it to the courts to extend the time indiscriminately would tend to defeat the object sought to be achieved by the amendments to the Code. It is, therefore, necessary to emphasize that the grant of extension of time beyond 30 days is not automatic, that it should be exercised with caution and for adequate reasons and that an extension of time beyond 90 days of the service of summons must be granted only based on a clear satisfaction of the justification for granting such extension, the court being conscious of the fact that even the power of the court for extension inhering in Section 148 of the Code, has also been restricted by the legislature. It would be proper to encourage the belief in litigants that the imperative of Order VIII Rule 1 must be adhered to and that only in rare and exceptional cases, the breach thereof will be condoned. Such an approach by courts alone can carry forward the legislative intent of avoiding delays or at least in curtailing the delays in the

disposal of suits filed in courts. The lament of Lord Denning in *Allen v. Sir Alfred McAlpine & Sons* [(1968) 1 All E.R. 543] that law's delays have been intolerable and last so long as to turn justice sour, is true of our legal system as well. Should that state of affairs continue for all times?"

(emphasis supplied)

19. The Supreme Court has administered a caution in terse terms that a dispensation that makes Order VIII Rule 1 directory leaving it to the Court to extend the time indiscriminately, would tend to defeat the object sought to be achieved by the amendments to the Code and it is therefore necessary to emphasize that, the grant of extension of time beyond 30 days is not automatic and that an extension of time beyond 90 days of the service of summons must be granted only based on clear satisfaction of the justification for granting such extension.

20. The aforesaid being the position in law, the learned Judge, City Civil Court was well within his rights in declining to condone the delay of 12 years in filing the written statement to the counter-claim.

21. The submission of Mr. Gujjar that, the prayer of the plaintiffs to strike off the additional counter-claim and at

the same time seek the relief of extension of time to file written statement to the additional counter-claim, are incongruous, appears to carry substance. Evidently, the Defendant Nos. 1 and 2 filed additional counter-claim in response to the amendment in the plaint. As noted above, no time limit for filing of the counter-claim is explicitly stipulated by the legislature. Rather the right to file a counter-claim hinges upon the accrual of the cause of action to file a counter-claim. If the Defendant Nos. 1 and 2 could demonstrate that, post amendment in the plaint in addition to filing the written statement, they were required to file additional counter-claim on account of the accrual of the cause of action, there is nothing in law which precludes the Defendant Nos. 1 and 2 from filing an additional counter-claim. Therefore, the prayer for discarding of the additional counter-claim whilst seeking condonation of delay in filing the written statement, not only to the counter-claim but also to the additional counter-claim, appears wholly unsustainable.

22. Resultantly, on both the counts, the learned Judge, City Civil Court, can be said to have exercised the discretion in a judicious manner. There is neither any legal

infirmity nor material irregularity in exercise of discretion by the City Civil Court. Resultantly, the petition deserves to be dismissed.

23. Hence, the following order.

:: O R D E R ::

i] The Writ Petition stands dismissed.

ii] Rule discharged.

No costs.

[N. J. JAMADAR, J.]