

City Civil and Sessions Court, Mazgaon Greater Mumbai

Court Room No. 31 – Commercial Court



MHCC010184962024

Notice of Motion Filed : 10.10.2024

Arguments Over : 28.02.2025

Decided on : 28.02.2025

Duration : 04 M 18 Days

Exhibit No. 8

Notice of Motion No. 104733 / 2024

from

Commercial Summary Suit No. 100476 / 2024

Plaintiff : Pinnacle Sand

VERSUS

Defendants : Simplex Infrastructures Ltd. & Ors.

Appearances

Plaintiffs : Adv. Ritesh Upadhyay

Defendant No. 1, 2, 5 & 8 : Adv. Sachidanand Pandey

CORAM : H. H. JUDGE SACHIN. B. BHANSALI

COURT ROOM NO.31.

DATE : 28.02.2025

ORDER

I) The defendant Nos. 1, 2, 5 and 8, by this Notice of Motion, are

seeking condonation of delay in filing their Written Statement.

2) The plaintiff, by an affidavit in reply dated 16.12.2024 (Exh.12) opposed the condonation of delay contending that since this is a Commercial Summary Suit, the delay cannot be condoned beyond 120 days. The plaintiff further contended that, in the present matter, the defendant Nos. 1,2,5 and 8 have caused a delay of more than 120 days in filing their Written Statement.

3) I have heard Learned Advocates appearing for the parties to the Suit. Perused Record. Points for determination, findings and reasons are as under:

Points

Findings

1 Whether defendant Nos. 1, 2 ,5 and 8 are entitled to relief, as sought in the Notice of Motion?.....

In the Negative.

2 What Order? **As per final order.**

REASONS

Reasons as to Point No. 1 & No. 2 :

4) At the outset, it is noted that, the plaintiff has filed the Suit under Order 37 of the Code of Civil Procedure. The procedure prescribed under this order does not confer a right on defendant Nos.1,2,5 and 8 to file their Written Statement as a matter of course.

5) The Service Affidavit (Exh.4) reveals that, defendant Nos. 1, 2, 5 and 8 were served with the Writ of Summons on 07.05.2024 at Kolkata. The original Writ of Summons is annexed with the service affidavit

(Exh.4) which has been perused by this Court. The relevant paragraphs of the Writ of Summons are reproduced below :

You are hereby summoned to cause an appearance to be entered for you, within ten days from the service hereof, in default where of the Plaintiff/s will be entitled at any time after the expiration of such ten days to obtain a decree for the sum of Rs. 1,45,84,419/- and such sum as prayed for and for costs, together with such interest, if any, as the Honourable Court may order.

If you cause an appearance to be entered for you, The Plaintiff/s will thereafter serve upon you a summons for judgment at the hearing of which you will be entitled to ask the Honourable Court for leave to defend the Suit.

Leave to defend may be obtained if you satisfy the Honourable Court by affidavit or otherwise that there is a defence to the suit on the merits or that it is reasonable that you should be allowed to defend the Suit.

6) As this is a Commercial Summary Suit, the defendants were required to appear within 10 days from the date of service of Writ of Summons. In absence of leave of this Court, the defendant Nos.1, 2, 5 and 8 cannot file their Written Statement. Moreover, as submitted by the learned Advocate for the plaintiff, the plaintiff is in process of taking out Summons for Judgment. In these circumstances, entertaining this Notice of Motion for condonation of delay in filing the Written Statement is not warranted. Hence, both points are answered accordingly. Hence, following order :

ORDER

1. The Notice of Motion No. 104733 / 2024, is rejected.
2. Order dictated and pronounced in Open Court.

3. Proceeding of Notice of Motion No. 104733 / 2024 is closed.
4. Record of Notice of Motion No. 104733 / 2024 shall be part of Commercial Summary Suit No. 100476 / 2024



Mumbai

Dated : 28.02.2025

(Sachin B. Bhansali)
District Judge,
Court Room No.31 - Commercial Court,
City Civil & Sessions Court,
Mazgaon, Greater Mumbai

CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER”		
UPLOAD DATE	TIME	NAME OF STENOGRAPHER
03.03.2025	5.45 p.m.	Prachi Y. Potdar Stenographer - Grade I
Name of the Judge		HHJ Shri. S. B. Bhansali (C.R.NO. 31)
Date of Pronouncement of Judgment/Order.		28.02.2025
Judgment/order signed by P.O on		03.03.2025
Judgment/order uploaded on		03.03.2025