

MHCC010051432023



Presented on : 09-05-2023

Registered on : 09-05-2023

Decided on : 12-09-2025

Duration : 2 years, 4 months, 3 days

IN THE BOMBAY CITY CIVIL COURT AT GREATER BOMBAY

NOTICE OF MOTION NO.1798 OF 2023

IN

S. C. SUIT NO.4583 OF 2010

(Bombay High Court Suit No.1798 of 2023)

1. Ramesh Harishankar Singh

Age about 40 years, Occ.: Student,

Residing at: A/202, Seeta Mahal

Co-operative Housing Society Ltd.,

Kasturaba Road No.5, Borivali (East),

Mumbai- 400 066.

2. Mrs. Nirmala Rajesh Singh

Aged about 36 years, Occ.: Housewife,

Residing at: A/202, Seeta Mahal

Co-operative Housing Society Ltd.,

Kasturaba Road No.5, Borivali (East),

Mumbai- 400 068.

.. Plaintiffs.

V e r s u s

1. Anita Shyam Kapoor

Aged about 48 years, Occ.: Not known,

Residing at: C-601, Om Sai Aradhana

Co-operative Housing Society Ltd., Shiv

Vallabh Road, Ashokvan, Dahisar (East),

Mumbai-400 068.

2. Shyam Sardilal Kapoor

Age about 60 years, Occ.: Not known,

Residing at: C-601, Om Sai Aradhana
Co-operative Housing Society Ltd., Shiv
Vallabh Road, Ashokvan, Dahisar (East),
Mumbai-400 068.

3. Poonam Rahul Revankar
Alias Poonam Chipkar
Aged about 29 years, Occ.: Not known,
Residing at: C/o Rahul Ahok Revankar
Panjabi Chawl, Jawahar Nagar, Khar (E),
Mumbai- 400 051.

.. Defendants

Appearance :-

Ld. Advocate Mr. Parag Mishra for the Plaintiffs.

Ld. Advocate Mr. Sankalan Das i/b Advocate Mr. P.P. Kakade for the
Defendants No.1 and 2.

CORAM: HIS HONOUR JUDGE

U.C. DESHMUKH

COURT ROOM NO.03

DATE: 12th September, 2025.

ORDER

This Notice of Motion is moved by defendants No.1 and 2 to
permit them to file their written statement setting aside no written
statement order.

2. It is contention of defendants/applicants that the plaintiff has
filed false and frivolous suit. They ought to have file written statement
within 30 days. However, as husband of defendant No.1 has pre-
occupation hence, they could not keep track of the matter. Hence, delay
is caused. Hence, this notice of motion.

3. In reply, the plaintiff submits that the notice of motion is filed

after lapse of 13 years without giving sufficient cause for such delay. Defendant Nos.1 and 2 appeared on 4.10.2010 before the Hon'ble High Court when the matter was ceased before it and waived service of writ of summons. Therefore, there is no reason to condone such inordinate delay. Hence, prayed to reject notice of motion.

4. To substantiate their case plaintiffs have relied upon decision of Hon'ble Apex Court in **Basawaraj & Anr. Vs. Spl. Land Acquisition Officer [2014 AIR (SC) 746]** wherein the Hon'ble Apex Court held that the sufficient cause means an adequate and enough reasons which prevented the applicant to approach the Court within limitation. Relying upon this dictum of the Hon'ble Apex Court it is submission of learned Advocate for the plaintiff that defendants/applicant have not supplied any cogent reasons to condone the delay. On the contrary, it is submission of learned advocate for the applicants that the matter in **Basawaraj** (supra) pertains to issue arisen out of land acquisition case. Therefore, it would not be applicable to the case.

5. The observations of Hon'ble Apex Court in para no.15 are relevant. Hence, reproduced as under:

“15. The law on the issue can be summarized to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the “sufficient cause” which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bonafide on this part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified

in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameteres laid down by this court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature.”

6. Though the matter in **Basawaraj** (supra) had arisen out of land acquisition proceedings, the observation of Hon'ble Apex Court on the issue of sufficient cause cannot be overlooked. The Hon'ble Apex Court has specifically observed that if any application is moved beyond the limitation prescribed then it is for the applicant to explain the Court as to cause of delay. The sufficient cause means an adequate and enough reasons which prevented the applicant from approaching the court within limitation. Thus, in the light of observation of Hon'ble Apex Court **Basawaraj** (supra) it has to see whether the applicants herein have sufficient cause which prevented them from filing written statement within limitation.

7. Record shows that on 4.10.2010 one advocate Shri. Kakade appeared on behalf of applicants and waived service of writ of summons. Thereafter, the matter is transferred to this court. This court on 18.3.2013 has passed no written statement order against applicants. Obviously, this is part of Court record and applicants have nothing to say about it. Thus, it is seen that applicants have appeared in the matter on 4.10.2010 and waived service of writ of summons. Thereafter, present notice of motion is moved on 9.5.2023 i.e. after

near about 13 years. The applicants say that they could not file written statement within time as husband of defendant No.1 pre-occupying. Apart from it applicants do not supply any other reason to file written statement. Thus, it has to see whether the fact that husband of defendant No.1 has pre-occupation is sufficient reason to accept the written statement of applicants after lapse of 13 years.

8. It is significant to note that applicants nowhere state as to what was nature, duration and place of occupation of husband of defendant No.1 which could be, if had explained, considered to see if applicants have reasonable cause to file written statement after lapse of 13 years. Thus, applicants have not come with specific cause for delay. The reason stated by applicants is not sufficient to condone delay to file written statement.

9. Record further shows that plaintiffs have filed affidavit of evidence at Exhibit-3 on 02.12.2014 after matter is proceeded without written statement of applicants and Ex-parte against defendant No.3. Applicants were present on 4.1.2022 on which the Court heard both sides on documents filed by the plaintiffs which were marked on the same day. Thereafter, both parties particularly, applicant's advocate also sought time. Applicants took cross-examination of plaintiffs witness Ramesh Harishankar Singh (PW1) on 16.1.2023. On that day on their request further cross-examination of PW1 is deferred. On the next date, applicants moved the present notice of motion. All these facts show that applicants took part in hearing of the matter and suddenly on 11.4.2023 filed the present notice of motion without explaining proper and sufficient reasons. Therefore, the notice of motion deserves to be rejected with costs. In the result, following order

is passed:

Order

1. Notice of Motion stands rejected with costs of Rs.10,000/- payable to plaintiff on or before next date.
2. Accordingly, Notice of Motion No.1798 of 2023 is disposed off.



(U. C. DESHMUKH)
Judge,
City Civil Court,
Mumbai.

Date: 12.09.2025

Dictated on : 12.09.2025
Transcribed on : 15.09.2025
Signed on : 18.09.2025

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER.”	
UPLOAD DATE AND TIME	18.9.2025/5.48 p.m.
NAME OF STENOGRAPHER (Grade-1)	(Mrs. Pradnya S. Naik)
Name of the Judge (With Court room no.)	Shri U.C. Deshmukh (C.R. No.03)
Date of Pronouncement of JUDGMENT/ORDER	12.9.2025
JUDGMENT/ORDER signed by P.O. on	18.9.2025
JUDGMENT/ORDER uploaded on	18.9.2025