

MHCC010041352026

IN THE BOMBAY CITY CIVIL COURT AT MAZGAON

NOTICE OF MOTION NO. 1895 OF 2026
IN
COMMERCIAL SUIT NO.313 OF 2025

Stallion Rubber Industries	<u>Plaintiff</u>
Versus	
Bharat Carbon and Oil Industries & Ors.	<u>Defendants</u>

<u>Appearances:</u>	
Adv. Santosh Thakur alongwith Adv. Dharmendra Tiwari	For plaintiff.
Adv. Noor Alam	For defendants.

CORAM : N. B. LAVTE, (C.R.No.31)

DATED : 19th August, 2026

ORDER(Delivered on this 19th day of August, 2026)

This Notice of Motion is filed by defendants to condone delay of 150 days in filing written statement and to take the written statement on record. The reason for delay is mentioned in the supporting affidavit. By filing reply, the same is strongly objected with prayer to dismiss the same. Rejoinder is filed by the defendants. Heard Adv. Noor Alam for defendants and Adv. Santosh Thakur for plaintiff.

2. According to Adv. Alam, they have received the copy of suit on

25.08.2025, however there is delay of 150 days in filing written statement. The delay was due to serious medical condition, prolonged illness and hospitalization of defendants. The delay is not intentional or deliberate and if it is not condoned, in that event the defendants will suffer irreparable loss. Whereas, Adv. Thakur vehemently opposed the submissions on the ground that defendants have failed to make out any sufficient cause to condone the delay. No any medical certificates are filed on record. As per the amended provision of the Code of Civil Procedure, in case of Commercial Suit, the written statement is to be filed within 120 days and if not then the right is forfeited.

3. Adv. Thakur further submitted that the defendants were served on 25.08.2025, whereas the Notice of Motion was filed on 16.03.2026, therefore the written statement is beyond 120 days and as per the Judgment in **SCG Contracts India Pvt. Ltd. Vs. K.S. Chamankar Infrastructure Pvt. Ltd.**, AIR 2019 SC 2691, the Court is not empowered to condone the delay. Hence, prayed for dismissing the Notice of Motion with costs.

4. From the pleadings of the parties and the arguments advanced, it is not disputed that defendants were served on 25.08.2025. On 22.09.2025, defendant No.2 Mr. Sudesh Kotian appeared and sought time to engage an Advocate. However, on 25.02.2026 again undertaking was filed by Adv. Alam on behalf of defendant Nos.1 to 3 to file Vakalatnama. It was filed on 16.03.2026 and on that day the draft Notice of Motion was also filed. If the date of service of writ of summons is taken into consideration, the statutory period to file written statement expired on 24.09.2025. Whereas, the extendable/outer limit to file the same expired on 25.12.2025. The draft Notice of Motion was

filed on 16.03.2026. Thus, if the date of service of writ of summons and filing of draft Notice of Motion is taken into consideration, there is delay of 204 days. However if the extendable period of 120 days is exempted, the delay comes to 84 days and not 150 days as claimed.

5. Thus, the delay is of 84 days. Question arise whether written statement beyond the outer limit of 120 days can be taken on record? This issue was resolved by the Hon'ble Supreme Court in the case **SCG Contracts India Pvt. Ltd. Vs. K.S. Chamankar Infrastructure Pvt. Ltd.**, AIR 2019 SC 2691, wherein, it was held that, the failure to file written statement within the statutory time period of 120 days in a Commercial Suit will result in the forfeiture of the right of the defendant to file a written statement.

6. Considering the express authority of **SCG (supra)** once the outer limit of 120 days is over, the written statement cannot be taken on record and the right to file the same stands forfeited. In view of the same, present Notice of Motion cannot be allowed. In the result, I proceed to pass following order :

ORDER

1	The Notice of Motion No.1895/2026 is dismissed.
2	The Notice of Motion No.1895/2026 is disposed of accordingly.



Dt.: 19.08.2026

(N. B. Lavte)
Judge, (C.R.No.31)
City Civil Court, Mazgaon,
MUMBAI

Dictated on: 19.08.2026

Signed on : 19.08.2026

CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL
SIGNED JUDGMENT/ORDER”

UPLOAD DATE	TIME	NAME OF STENOGRAPHER
19.08.2026	5.45 p.m.	Prachi Y. Potdar Stenographer - Grade I
Name of the Judge		HHJ Shri. N. B. Lavte (C.R.NO. 31)
Date of Pronouncement of Judgment/Order.		19.08.2026
Judgment/order signed by P.O on		19.08.2026
Judgment/order uploaded on		19.08.2026