

MHCC040033652025



IN THE BOMBAY CITY CIVIL COURT AT DINDOSHI
(BORIVALI DIVISION), GOREGAON, MUMBAI

NOTICE OF MOTION NO. 1340 OF 2025

IN

SUMMARY SUIT NO. 638 OF 2021

Dr Mursalin Abbas Ali Shaikh

...Plaintiff.

V e r s u s

Dr Jaikishan Vora

...Defendant.

Shri Sarvaraj Nadar, Advocate for plaintiff.

Shri Virendra Jalan, Advocate for Defendant.

CORAM : Shri.A.R.Kamble,
Ad-hoc Judge, City Civil Court
and Additional Sessions Judge,
Borivali Division, Dindoshi, Mumbai.
(C. R. NO. 05)

Date : 18th October 2025.

O R D E R

The present Notice of Motion is taken out by the defendant for setting aside order dated 18.03.2025 to proceed Ex-parte and to condone the delay of 112 days for filing this notice of motion.

2. It is contended that on 18.12.2024 the defendant was present alongwith his advocate and filed Vakalatnama. He was not

served with writ of summons till date.

3. It is further contended that as per the order of the court. The writ of summons was published in two local newspapers 'Free Press Journal' and 'Navshakti' on 29.11.2024. Since long back the defendant was resided at Lonavala and therefore he has no knowledge about the said paper publication since the said newspapers are not available in Lonavala and therefore he was not aware of stages of the suit. The presence of the defendant on 18.12.2024 was not considered by this Court. The defendant had no knowledge of publication, therefore there is delay of 112 days in taking out this notice of motion.

4. The notice of motion is strongly opposed by filing reply contending that the plaintiff had filed summary suit in the year 2018 and defendant was served and appeared. The summary suit was converted into commercial suit and again later on converted to summary suit. Therefore, on 04.11.2023 this Court directed the plaintiff to serve a fresh writ of summons through bailiff. The writ of summons returned unserved on 07.12.2023. As per the bailiff report, the premises where the defendant was residing was demolished 6 months prior.

5. The plaintiff on 06.06.2024 got order of substituted service and the writ of summons was published in two local daily newspapers 'Free Press Journal' and 'Navshakti' by order dated 11.07.2024. Accordingly, the writ of summons is duly served to the defendant to the last known address of the defendant. The bailiff affixed the writ of summons alongwith copy of plaint at the outer door of last known address of the defendant as well as on notice board of the Court premises. Therefore, the writ of summons is duly served.

6. Heard both the sides. The defendant has filed written notes of argument. It is argued that the writ of summons returned unserved which was sent on the address of the defendant since the premises was demolished. The appearance of the advocate on 18.12.2024 was taken on record. It is further argued that the defendant was residing at Lonavala therefore he could not come to know about the paper publication since the said papers are circulated in Mumbai only. On the contrary, the submission of the learned advocate for the plaintiff that though the advocate for defendant tendered his appearance it was not within the prescribed period as per Order 37. The reason cited by the defendant is not reasonable so as to cause delay of 112 days and the delay is not explained. Therefore, it is submitted to reject the notice of motion.

7. Perused the record. On perusal of roznama dated 18.03.2025, it appears that Adv. Shri Virendra Jalan for defendant was present. The plaintiff filed affidavit of service by paper publication. The order was passed on 18.03.2025 that the appearance of defendant is not within the prescribed period of 10 days from the date of service of writ of summons. Hence, suit be proceeded further as no appearance from the defendant side and the matter was kept for Ex-parte evidence. It reveals from roznama itself that the appearance was not tendered as per the provisions of Order 37. It is to be noted that the only reason to the defendant for non appearance is that he was residing at Lonavala and therefore not aware of issuance of writ of summons through paper publication. The submission of the defendant is supported by filing copy of adhar card of the defendant showing address of Lonavala. However, the said document does not show that when the writ of summons was

issued by order dated 11.07.2024 by paper publication, during that period or prior to that the defendant was residing at Lonavala.

8. It appears from submission of both the sides that initially the suit was filed in the year 2018 and the defendant appeared in the suit later on it was converted to commercial suit and again to summary suit. Therefore, as per the direction of the Court a fresh writ of summons was issued which returned unserved. Therefore, the plaintiff sought substituted service and writ of summons was issued by paper publication in two newspapers i.e. marathi and english. To the knowledge of the plaintiff, the writ of summons was issued on the last known address of the defendant by way of paper publication. Therefore, the service is proper and effective. Address of the defendant at the relevant time was of Vile parle west, Mumbai to the knowledge of the plaintiff. Now the defendant came with a defence that he is residing at Lonavala and therefore has no knowledge of paper publication. The only reason to the defendant that he is not yet served with the writ of summons but no any documentary evidence is produced by the defendant to show that he was not residing in Mumbai at the given time i.e. July 2024 when the writ of summons was issued. There is no explanation as to why such a huge delay of 112 days is caused in taking the notice of motion. Therefore, I do not find sufficient cause rather adequate reason so as to presume that the defendant was prevented from approaching the Court within stipulated period or at the earliest when it came into his knowledge that the writ of summons is issued and therefore notice of motion deserves to be dismissed. Hence, following order:

:ORDER:

1. The Notice of Motion No. 1340 of 2025 is rejected.
2. The Notice of Motion No. 1340 of 2025 is disposed of accordingly.

(A.R.Kamble)

Ad-hoc Judge,
City Civil Court and Session Court,
Borivali Division, Dindoshi, Mumbai.

Date : 18.10.2025

Direct Dictated on computer on	:	18.10.2025
Corrected and Signed on	:	18.10.2025

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

18.10.2025 at 5.45 PM
UPLOAD DATE AND TIME

Mrs. Revati V. Kadam
NAME OF STENOGRAPHER

Name of the Judge (With Court room no.)	SHRI. A.R.Kamble (C.R. NO.5)
Date of Pronouncement of JUDGMENT/ ORDER	18.10.2025
JUDGMENT/ORDER signed by P.O. on	18.10.2025
JUDGMENT/ORDER uploaded on	18.10.2025