

CNR NO. MHSCA30005022019 	Presented on : 25.03.2019 Registered on : 02.04.2019 Decided on : 18.11.2025 Period required for disposal 06 Years, 07 Months, 24 days
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IN THE COURT OF SMALL CAUSES, AT MUMBAI.
[BANDRA BRANCH]

MARJI APPLICATION NO. 32 OF 2019

IN

L.E. & C. SUIT NO. 62/80 OF 2012

Mr. UMESH SWAMI

Aged about 39 years, Occ : Business,
An adult, Indian Inhabitant of Mumbai,
Residing at Flat No. 101, 1st Floor,
Raj Arcade Building, Dhanukarwadi,
Kandivali (East),
Mumbai – 400 101

.....Applicant
(Org. Plaintiff)

VERSUS

Mr. MUSTAK HAMID SHAIKH

Aged about 45 Years, Occ : Business
An adult, Indian Inhabitant of Mumbai,
Residing at Saheb Shah Chawl, Ganodevi,
Dongri, Andheri (West),
Mumbai – 400 058

.... Respondent
(Org. Defendant)

Advocate for the applicant/ Orig. Plaintiff : Mrs. Karuna S.Mallah
/Shweta Mishra

Advocate for the respondent/Orig. defendant : Mr. J. S. Yadav

Coram : Mr. P. P. Naigaonkar,

Judge, C.R. No. 38 (B.B.)

Date : 18th November, 2025

JUDGMENT :

1. This is application filed by the applicant/original plaintiff for condoning the delay in taking out this application on various grounds. My learned Predecessor has issued notice to the non applicant/orig. defendant. Non applicant/original defendant accordingly filed reply below **Exhibit-7**. The applicant/original plaintiff has also filed rejoinder below **Exhibit-10**.

2. On going through the pleadings made in the application, reply and rejoinder given, following Points arise for my determination, to which, I have given my findings for the reasons as follows :-

Sr. Nos.	Points	Findings
1	Whether the application is liable to be allowed ?	-In the affirmative
2	What order ?	-Application is allowed as per final order

REASONS

AS TO POINT NOS. 1 AND 2 :

3. I have heard learned Advocates for both the sides and I have gone through the written submissions, pleadings and

documents on record. On going through the same, the brief facts of the case are as under :-

It appears that, the defendant is the licensee of the plaintiff and by virtue of Leave and Licence Agreement dtd. 11.01.2010, the suit premises was given to the defendant. It was agreed between the parties that, security deposit of Rs.1,50,000/- was to be given and monthly compensation of Rs.12,000/- per month on terms and conditions mentioned in the said Leave and Licence Agreement will be charged. It is contended that, since the execution of Leave and Licence Agreement, the defendant did not pay the monthly compensation/licence fee in accordance with the execution of Leave and Licence Agreement. Accordingly, the plaintiff has filed the suit for recovery of possession of the suit premises and also prayed for directing the defendant to pay the arrears of monthly compensation of Rs.3,60,000/- and also to continue to pay the monthly compensation at the rate of Rs. 12,000/- per month.

4. After filing of the suit, the suit summons were served. Defendant did not appear after the service of suit summons and accordingly, the matter was proceeded ex-parte. Accordingly, after following the procedure, the suit was decreed in favour of plaintiff and by Judgment and Order dtd. 09.04.2014 the defendant was directed to vacate the suit premises and also

directed to pay the arrears of monthly compensation till handing over the possession of the suit premises.

5. On or before execution of warrant of possession, the defendant took out MARJI Application No.54 of 2015 to set aside the ex-parte decree. The said MARJI Application was rejected by Order dtd. 11.01.2016. Against the said Order, the defendant again filed Misc Appeal No. 17 of 2016, which came to be dismissed by the Appellate Bench of this Court. The defendant has filed Writ Petition No. 2134 of 2017 before the Hon'ble High Court. The Hon'ble High Court had heard the said Writ Petition and observed that, the defendant had not paid monthly compensation since inception nor is ready and willing to pay the same during pendency of the Writ Petition. The Hon'ble High Court has pleased to put that, if the defendant was ready and willing to handover the possession of the suit premises to the Court Receiver who would appoint respondent/plaintiff as an agent, then the decree can be set aside. The defendant agreed to handover the possession of the suit premises. Accordingly, the Hon'ble High Court was pleased to appoint the Court Receiver and accordingly set aside the ex-parte decree and restored the suit to decide on its own merit. It is contended that, till passing of the Orders dtd. 15.02.2017 in Writ Petition No. 2134 of 2017 the defendant was in arrears of monthly compensation to the tune of Rs.9,12,000/-. The

defendant has not paid the said compensation and accordingly, the Hon'ble High Court was pleased to appoint the Court Receiver and accordingly, handed over the possession of the suit premises to the plaintiff.

6. On going through the Order passed by the Hon'ble High Court in Writ Petition No. 2134 of 2017, the liberty to agitate was given to the defendant.

7. The plaintiff by way of this MARJI Application has stated that, the suit has been dismissed for non appearance on 21.08.2018 for default. It is submitted that the proceedings in the trial court were pending for examination-in-chief and list of documents and its admissibility was already decided at the time of passing the ex-parte decree. The cause for delay has been mentioned by the applicant/orig. plaintiff, more particularly in Para Nos.3 to 14. On going through all these paragraphs, it appears that, the applicant/ orig. plaintiff has stated that, there was some dispute between the advocates who were representing earlier and subsequent thereto. The plaintiff has also stated that, the earlier advocate was junior advocate who was working for senior advocate. Due to the dispute between the Advocates and as there was change in office address, the plaintiff could not approach the Advocate. The plaintiff has enumerated all the disputes in detail in Para Nos. 3 to 9.

8. On going through Para Nos.10 and 11, it appears that, the plaintiff has put forward his family dispute, which arose in September, 2018. On going through the reasons put forward by the applicant/ orig. plaintiff, it appears that, without going into the details of dispute between the advocates and with respect to the family dispute, the delay has been caused. Without going into the details of the dispute, it appears that, liberal approach has to be taken without going into the hyper-technicalities. It also appears that, there are some negligence on the part of plaintiff, earlier advocate, subsequent advocate thereby the suit came to be dismissed in default. Though, the reasons given by the applicant/orig. plaintiff are not supported by any documents, the other party can be compensated by imposing costs.

9. On going through the Order passed by my learned Predecessor while dismissing the suit in default, it appears that, in L.E. & C Suit No. 62/80 of 2012, it appears that, issues were framed on 12.02.2018, subsequently, on 02.04.2018 the matter was adjourned for leading evidence of plaintiff for four dates. It appears that, sufficient opportunity was given to the plaintiff to lead the evidence for four dates. Ultimately, the said suit was dismissed in default. It also appears that, the plaintiff has not filed the copy of roznama in order to justify his contention.

10. In support of his contentions, the learned Advocate for the defendant has relied on following authorities :-

1. **Suresh @ Pappu Vs. Vidhi Chandra Dharamshala and others 2002(1) Rent Control Reporter 288** in which it is held that, “Absence of a party, there is no practice or rule of procedure to inform adjourned date to absent party and it is the duty of the party to find out the adjourned date fixed for hearing.” It is also held that, “Applicant by his own negligence remained absent on the date fixed. No justifiable ground for recalling the order.”

2. **Bhalchandra Ganesh Naik & Anr. Vs.Sona Hotel & Ors. 2009(4) ALL M.R. 349** in which it is held that, “Restoration of suit-Application is required to be filed within 30 days-Question of obtaining certified copy and exclusion of time required therefore does not arise and Question of exclusion of time is to be considered when appeal is to be preferred.” It is also held that, “It was also the duty of plaintiffs to check with counsel as to what happened to the proceeding.”

3. **Rajendra Namdeorao Akre vs. Rajkumar Bhalerao Balbudhe & another [2016(1) Mh.L.J.184]** in which it

is held that, “Imposition of costs cannot be a substitute for absence of reasons to condone delay.”

4. Basawaraj and another vs. Special Land Acquisition Officer with Civil Appeal No. 6974 of 2013 with Civil Appeal No. 6975 of 2013 Basawaraj and others vs. Special Land Acquisition officer (2013)14 Supreme Court Cases 81 in which it is held that, “There is no justification in condoning the delay by imposing conditions. Even though the limitation may harshly affects rights of a party but it has to be applied with all its rigour when prescribed by statute.”

5. Vasant Vithal Gawand vs. Shantaram Tukaram Gawand (Since Deceased) by his L.Rs. Prakash Shantaram Gawand and others [2016(1) Mh.L.J. 89] in which it is held that, “ Imposition of costs cannot be substitute for absence of reason to condone the delay.”

10. In view of the above circumstances, without going into the reasons which are not justifiable, as not supported by the documents, the defendant can be compensated by imposing cost. Without taking the hyper technical approach and in the interest of justice and fair chance, the MARJI Application is liable to be allowed and delay can be condoned for filing the

restoration application. In view of the above said circumstances, I answer **Point No.1 in affirmative** and pass following order for Point No. 2 :-

ORDER

1. MARJI Application No.32 of 2019 is allowed.
2. Delay stands condoned subject to payment of cost of Rs.5,000/- (In words, Rupees Five Thousand only) to be paid to the respondent/ defendant or to be deposited in the Court.
3. After the payment of cost, the applicant/plaintiff is allowed to file necessary proceeding for restoration of suit.

(Judgment dictated and pronounced in open Court)

Date : 18.11.2025

**(P. P. Naigaonkar)
Judge, C.R. No. 38 (B.B.)
Small Causes Court, Mumbai**

Judgment dictated on - 18.11.2025
Judgment typed, checked and signed on -18.11.2025