

MHCC010037882026



Presented on : 16-03-2026

Registered on : 16-03-2026

Decided on : 23-03-2026

Duration : 0 years, 0 months, 7 days

IN THE BOMBAY CITY CIVIL COURT AT GREATER BOMBAY

NOTICE OF MOTION NO.1553 OF 2026

IN

S. C. SUIT NO.1845 OF 2017

Mr. Suryakant Dinkar Javkar

.. Plaintiff

Versus

1. Nitin Eknath Amberkar and Others.

.. Defendants

Appearance :-

Ld. Advocate Mr. M.R. Yadav for the Plaintiff.

Ld. Advocate Ms. Aishwarya Bhandari for the Defendants.

CORAM: HIS HONOUR JUDGE

S.M. BUKKE

COURT ROOM NO.03

DATE: 23rd March, 2026.

ORDER

(Dictated and Pronounced in open Court)

1. Defendants No.1 to 4 in Suit No.1845 of 2017 have preferred present notice of motion to set aside order dated 07.10.2025 passed by this Court against them to proceed without reply of defendants to the documents of the plaintiff.

2. The plaintiff has filed present suit for partition, declaration, possession, appointment of Court Receiver and mesne profit. The copy of affidavit in lieu of examination-in-chief along with document served on defendants vide order dated 21.03.2025. Subsequently, the matter was fixed on 16.04.2025.

3. The defendant No.1 and power of attorney of defendant Nos.2 to 4 had undergone knee replacement surgery and he was not in a position to attend the matter. Therefore, he arranged for some one to appear before the Court and his advocate appeared. Subsequently, the defendant changed the advocate and sought time to file reply. On 07.10.2025, newly appointment advocate filed Vakalatnama and sought time to file reply on document. Instead of granting time the court has passed no reply order to the documents.

4. In filing reply the delay is not intentional it was due to above mentioned circumstances. There is merit in defence of defendants case. No harm will cause to the plaintiff if the notice of motion is allowed. However, grave harm will cause to the defendants if they are not permitted to file their reply. Lastly, the defendants craved to set aside order dated 07.10.2025.

5. The plaintiff strenuously objected for setting aside the order on the ground that its delay tactics.

6. Heard the learned advocate for the plaintiff as well as learned advocate for the defendants. Perused record.

7. On perusal of record it appears that the present suit for partition, declaration, perpetual injunction is instituted on 27.07.2017. Issues are framed on 08.12.2023 and since then matter is fixed for recording of evidence. On 21.11.2024 the plaintiff has tendered affidavit of evidence along with list of documents. My predecessor has passed no reply on documents and right to file reply is forfeited vide order dated 07.10.2025.

8. The record itself shows that ample opportunities were given to defendants to file reply i.e. upto one year. However, the present advocate appeared on same day needless to say that the change in the advocate will not be a change in the stage of the suit. The advocate who accepted the brief is well aware about the facts on record. However, as submitted by the defendant his affidavit is supported by the medical certificate. Therefore, on medical ground the delay caused to file reply on documents needs to be condoned.

9. This is suit of 2017 and if only to file the reply to the documents requires one year then it will take years together to decide the suit. Therefore, to curb delay tactics such order was necessity and need of the hour. Now the defendants are ready to file reply. They are ready to decide the suit. As stated supra, inconvenience caused to the plaintiff can be compensated by imposing cost under Section 35 of C.P.C. This court is inclined to impose the cost, because there is already delay of one year to file a reply and now due to new appointment of lawyer again it will take time. This Court has to struck balance between inconvenience caused to the plaintiff as well as the right of defendants to file reply on documents and contesting the suit on merit. The cost is an compensatory cost. It is also mandatory when the delay

is caused. Therefore, the notice of motion deserves to be allowed.
Hence, I pass the following order:

Order

1. Notice of Motion No.1553 of 2026 made absolute in terms of prayer clause (a) subject to costs of Rs. 3,000/- payable to DLSA within 15 days.
2. If defendants fail to pay the costs within 15 days this order automatically stands vacated.



Digitally signed
by
SUDHIRKUMAR
MURLIDHARRAO
BUKKE
Date: 2026.04.02
15:06:42 +0300

(S.M. BUKKE)
Judge,
City Civil Court,
Mumbai.

Date: 23.03.2026

Dictated on	: 23.03.2026
Transcribed on	: 24.03.2026
Checked on	: 01.04.2026
Printed on	: 02.04.2026
Signed on	: 02.04.2026

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER.”	
UPLOAD DATE AND TIME	2.4.2026/3.04 p.m.
NAME OF STENOGRAPHER (Grade-1)	(Mrs. Pradnya S. Naik)
Name of the Judge (With Court room no.)	Shri S.M. BUKKE (C.R. No.03)
Date of Pronouncement of JUDGMENT/ ORDER	23.03.2026
JUDGMENT/ORDER signed by PO. on	02.04.2026
JUDGMENT/ORDER uploaded on	02.04.2026