

MHCC010186752024



IN THE CITY CIVIL COURT AT MAZGAON, MUMBAI
NOTICE OF MOTION NO.5046 OF 2024
IN
SUMMARY SUIT NO. 56 of 2017

Kotak Mahindra Bank Ltd

A Banking Company within the
Meaning of Banking Regulation Act,
1949 having its Registered office at
BKC, C-27, G-Block, Bandra Kurla
Complex, Bandra € Mumbai and branch
office at ground floor, Samsung
Building, Vijay Bhavya Complex,
159-A, CST Road, Kalina
Santacruz (E), Mumbai- 400 098.

...Plaintiff

V/s.

1. Ms. Chhaya Kishor Jadhav D/o,
Mr. Rao Narayan Baburao of Mumbai
Indian Inhabitant, res. At Room No.6,
Bharat Bhauvan Chawl, Shobharao,
Joshi Baug, near Munna Pandit Office,
Kalyan (W), Mumbai and Flat No. 3 & 4
Shiv Darshan Apt. No.2, 1st floor, near
Narkar Kirana Stores & Bhir Chawl
Manda, oop. Sawgatam Hotel,

Titwala (E), Taluka Kalyan, Thane
 And Also at Satsang Apartment No.1
 A Wing, 1st Floor, Room No.8, Opp.
 Punjabi Estate, Kopar, Thane
 And Also Swastika Apart, A-wing
 402, Hands Nagar, near ST Workshop,
 Khopat-Thane (W), And also at
 Arogya Seva Samchalaya, Saint
 George Hospital, Fort, Mumbai 400 001.
 And also at Staff Nurse Labour Ward,
 Civil Hospital, Tembi Naka, Thane (W).

2. Mrs. Archana Kankose,

Residing at: Flat No. 103, 1st Floor,
 Adarsha Nagar Co-op Hsg. Soc Ltd,
 Near Pratap Cinema, Kolbad Road,
 Thane (West) and also at Staff Nurse,
 Central Hospital, Ulhasnagar-4.

3. Mr. Ajay Umashankar Agnihotri
 (Partner of Prathmesh Constructions
 Builders and Developers) having add.
 At Prathmesh Building, 1st & 2nd Floor
 Nearby Shri Sai Krupa Niwas,
 Behind Talao, Titwala (East).

... Defendants

Appearance:-

Ld. Advocate Praful Chitpte i/b H and S. Legal Ventures for the
 plaintiff.

Ld. Advocate Rajesh M. Patil for defendant No.3

CORAM : HHJ SHRI SANGRAM SHRIHARI SHINDE
C. R. NO. : 81
DATE : 11/04/2025.

ORDER

(Dictated and pronounced in open Court)

1. This notice of motion is taken out by defendant No.3 to condone delay to set-aside exparte order dated 22.10.2019 and to allow to file Vakilpatra and to place his defence on record. Plaintiff filed reply in affidavit and resisted the notice of motion and prayed for dismissal for it.

2. It is argued on behalf of defendant No.3 that writ of summons is not served to him. Further, he came to know that present suit is filed against him when he received summons for judgment No. 205/2024 on 19.09.2024. It is his further contention that as per order passed in **Suo-Moto Writ Petition (c) No. 3/2020 Hon'ble Apex Court** had given discretion not to take coercive action from 23.03.2020 to 28.02.2022. It is further submitted that since 02.02.2021 he was admitted in the hospital and taking treatment. Further, defendant No.3 is not concern with the suit transaction there is no privity of contract defendant No.3 and plaintiff. Further, defendant No.3 is builder and developer. Defendant No. 1 had purchased flat from defendant No.3 for consideration of Rs.6,00,000/- and paid amount of Rs.50,000/- towards part consideration. Therefore, agreement of sale was executed on 04.12.2003 in favour of defendant No.1. Further defendant No. 1 borrowed loan of Rs.4,14,000/- from ICICI Bank and paid to defendant No.3. However, due his financial difficulties defendant No.1 cancelled said agreement for sale in the year 2004. Defendant No.3 refund all amount to defendant No.1 and therefore, he is not concerned with the suit transaction. Thus due to aforesaid reason there is delay to set-aside

exparte order. It is not intentional one. Moreover, he has goods case on merits. Hence, delay may be condone and set-aside exparte order dated 22.10.2019. Hence, Notice of Motion may be allowed.

3. On the other hand it is argued on behalf of plaintiff that he has filed suit for recovery of money against defendants. Defendant No.1 has borrowed a loan and defendant No.2 is guarantor. Defendant No. 3 to whom disbursed amount is received. Defendant No.1 failed to repay the said amount. It is further submitted that defendant No.3 has made false statement that he was not served with the Writ of Summons. On the contrary, defendant No.3 served with the summons by RPAD. Accordingly plaintiff at filed affidavit of service on 22.10.2019. As defendant No. 3 failed to appear therefore, order dated 22.10.2019 was passed to proceed matter exparte against him. Admittedly due to Covid-19 Pandemic and some dates Court was not functioning. However, it appears defendant No.3 failed to take steps to appear before the Court. The reasons given by defendant No. 3 to condone the delay and to set aside order dated 22.10.2019 are not cogent and sufficient to allow the Notice of Motion. Hence, notice of motion may be dismissed with costs.

4. Perused notice of motion, reply and record. Heard, both parties. On perusing roznama dated 22.10.2019, it appears that order was passed to proceed matter exparte against defendant No. 2 and 3. It is specifically mentioned that writ of summons was served to the defendants. Admittedly there is delay to set aside exparte order dated 22.10.2019. Further, during Covid-19 Pandemic situation functioning was Court was closed and as per direction of Hon'ble Apex Court limitation was extension from 23.03.2020 to 28.02.2022. However, it appears defendant No. 3 has taken on this Motion on 10.10.2024. It is

the contention of defendant No. 3 he came to know the exparte order on 19.09.2024. therefore, it is contention of defendant No.3 that the motion is filed within limitation. As per provision of limitation defendant No.3 ought to have file Notice of Motion to set-aside exparte order dated 22.10.2019 within 30 days from the date of order. Therefore, there is delay of near about two years to take out this Motion.

5. The reason given of Covid-19 Pandemic situation can be considered, however, as per direction of Hon'ble High Court the period from 23.03.2020 to 28.02.2022 is exempted for limitation purpose. The ex-parte order came to be passed against defendant No.3 on 22.10.2019. Therefore, the said reason is not helpful for defendant No.3. However, further reasons given by defendant No.3 that he was admitted in the hospital and was under treatment from 02.02.2021. It is pertinent to note that defendant No. 3 has not filed any medical certificate to support his contention. Thus, it appears that except these reasons defendant No.3 has not given any other reason. Therefore, these reasons are not cogent, sufficient and satisfactory to condone delay of near about two years to set-aside order dated 22.10.2019. Hence, I proceed to pass following order.

ORDER

1. Notice of Motion No.5046/2024 is dismissed.
2. Notice of Motion No.5046/2024 is disposed of accordingly.



(Sangram S.Shinde)

Adhoc Judge,
City Civil Court Mazgaon, Mumbai.
Court Room No.81

Date: 11/04/2025

Dictated on : 11/04/2025
Corrected & signed on :16/04/2025

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

UPLOAD DATE
16/04/2025

NAME OF STENOGRAPHER
Mr. Mahesh S. Lugade

Name of the Judge (with Court Room No.)	Shri S. S. Shinde C.R. No.81
Date of Pronouncement of JUDGMENT/ ORDER	11.04.2025
JUDGMENT/ORDER signed by P. O. on	16.04.2025
JUDGMENT/ORDER uploaded on	16.04.2025