



IN THE BOMBAY CITY CIVIL COURT, AT BOMBAY
NOTICE OF MOTION NO.2829 OF 2023
(CNR NO.MHCC01-008051-2023)
IN
SUIT NO.611 OF 2021

Mrs.Sumitra Ajay Gupta Applicant/orig. Defendant

Versus

Jyotirmai Surendranath Gupta Respondent/Plaintiffs

CORAM : HIS HONOUR JUDGE
SUBHASH K. KARHALE
C.R.NO. : 01.
DATE : 04.07.2025.

Adv. Ms.Siddhi Sawant for applicant/defendant.
Adv. Ms.Mayuri Mishra h/f Bhagwan Mishra for respondent/plaintiff.

ORAL ORDER
(DICTATED IN OPEN COURT)

1. The defendant lady has taken out this Notice of Motion to condone the delay for filing her Written Statement.
2. The Plaintiff has filed his affidavit-in-reply and resisted the Notice of Motion.
3. Heard learned Adv. Ms.Siddhi Sawant for defendant and learned Advocate Ms.Mayuri Mishra h/f Bhagwan Mishra for plaintiff.

4. Learned Advocate for defendant submits that the Writ of summons was served on defendant in the month of February 2021. The defendant appeared in the matter on 04.05.2021. The plaintiff and defendant are real brother and sister interse. Hence, the matter was referred for mediation. Meanwhile, there was a lockdown due to COVID and the defendant being a poor lady had applied to DLSA for providing Advocate. However, the work of preparing list of panel advocates was going on in the DLSA and hence, she did not get Advocate at the earliest. Hence, the delay is caused in filing Written Statement. The delay is not intentional but it is caused due to aforesaid reasons. Hence, same may be condoned.

5. On the contrary, learned Advocate for the plaintiff submits that the Writ of Summons was served on defendant on 26.02.2001. As per roznama, defendant was present before the court in the month of February-2021. The time to file Written Statement is expired on 25.03.2021. Hence, there is delay of more than 828 days in filing Written Statement. The defendant has not explained the delay properly. Hence, if allowed heavy cost may be imposed.

6. Admittedly, plaintiff and defendant are real brother interse. It is also fact that the Writ of Summons was served on defendant on 04.05.2021. The time to file Written Statement is expired on 25.03.2021 as the defendant has not get it extended upto 60-90 days. Meanwhile, the matter was referred for mediation but it was failed as per the report dated 06.08.2021. The defendant states that she is a poor lady and had applied to DLSA, Mumbai for providing Advocate through the DLSA office. However, as the work of preparing list of panel advocates was going on, she could not get the Advocate at the

earliest. Lastly, she has engaged private advocate and has filed this Notice of Motion.

7. Thus, prima-facie, there is delay in filing Written Statement from 25.03.2021 till filing of Notice of Motion on 27.04.2023. However, considering aforesaid facts, circumstances and reasons more particularly, poverty of defendant, the time consumed in mediation process for taking legal aid etc. it would be just and proper to condone the delay. So also, to decide the real controversy between both parties fully and finally on merit, the opportunity to file Written Statement has to be given to defendant. The inconvenience caused to the plaintiff can be compensated by imposing cost on defendant. However, considering financial condition of the defendant and she being a lady, this Court restrict the cost as Rs.5000/-. Hence, the order :-

ORDER

1. Notice of Motion no.2829 of 2023 is allowed subject to cost of Rs.5,000/- (Rupees Five Thousands Only) payable by defendant to plaintiff on or before 18.07.2025 and the delay caused for filing Written Statement is hereby condoned.
2. Notice of Motion is disposed off accordingly.

DATE : 04.07.2025



(SUBHASH K. KARHALE),
Judge,
City Civil & Sessions Court,
Greater Mumbai.

Dictated and typed on : 04.07.2025.
Signed on : 04.07.2025.

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

DATE : 04.07.2025, AT 05.00 P.M.

MAHESH KESHAV SAKHARKAR

STENOGRAPHER GRADE-I

UPLOAD DATE AND TIME

NAME OF STENOGRAPHER

Name of the Judge (with Court no.) : SHRI SUBHASH K. KARHALE. C.R.NO.01.

Date of pronouncement of judgment/order : 04.07.2025.

Judgment/order signed by the P.O. on : 04.07.2025.

Judgment/order uploaded on : 04.07.2025, AT 05.00 P.M.