IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10181 OF 2019

M/s. Real Gem Buildtech Pvt. Ltd.
A Company duly incorporated under
the provisions of Companies Act,
1956 having its registered office at
DB House, General A. K. Vaidya Marg,
Goregaon (East), Mumbai 400 063. ...Petitioner

VERSUS

1. M/s. East Tradvest Pvt. Ltd.
A Company duly incorporated
under the provisions of the
Companies Act 1956 having its
registered office at 428, Kalbadevi
Road, 2nd Floor, Abhay House, Old
Post Office Lane, Mumbai 400 002.

2. Pawan Jugalkishore Barasia,
the Director of M/s. East Tradvest
Pvt. Ltd., having his officer at
428, Kalbadevi Road, 2nd Floor,
Abhay House, Old Post Office Lane,
Mumbai 400 002. ...Respondents.

WITH

WRIT PETITION NO. 10076 OF 2019

M/s. Real Gem Buildtech Pvt. Ltd.
A Company duly incorporated under
the provisions of Companies Act,
1956 having its registered office at
DB House, General A. K. Vaidya Marg,
Goregaon (East), Mumbai 400 063. ...Petitioner

VERSUS

1. M/s. Mayuresh Structure Pvt. Ltd.
A Company duly incorporated
under the provisions of the
Companies Act, 1956 having its
registered office at 428, Kalbadevi
Road, 2nd Floor, Abhay House, Old
Post Office Lane, Mumbai 400 002.

2. Pawan Jugalkishore Barasia,
the Director of M/s. Mayursh Structure
Pvt. Ltd., having his officer at
428, Kalbadevi Road, 2nd Floor,
Abhay House, Old Post Office Lane,
Mumbai 400 002. ...Respondents.

Mr. Ranjit Thorat, Senior Advocate a/w. Ms. Sonali Salaskar i/b. Mr. G. K. Tripathi for the petitioner.
Mr. Nishant Tripathi a/w. Mr. Pranav Vaidya i/b. M. Tripathi & Co. for the respondents.

CORAM : GAURI GODSE J
RESERVED ON: 9th APRIL 2026
PRONOUNCED ON: 9th JULY 2026

JUDGMENT:

1. Both these writ petitions are filed by the defendant to challenge the order passed by the trial court rejecting the defendant's application to condone the delay in filing the written statement and taking on record the written statement. In view of the Order dated 22nd January 2026, the petitions were taken up for final disposal at the admission stage.

BASIC FACTS:

2. The respondents are the original plaintiffs who filed two separate suits against the petitioner for specific performance to execute the agreement under the provisions of the Maharashtra Ownership Flats Act, 1963 ("MOFA") in respect of the flats booked by them in the defendant's project. The plaintiffs filed the suits alleging that, despite accepting a substantial payment towards the sale consideration amounting to more than 25% of the total sale consideration, the defendant refused to execute and register the agreement. The controversy in both the suits and the defendant is the same. The plaintiff no. 2 is the same in both the suits, who is the director of the respective plaintiff no. 1 in both the suits. Hence, both the petitions are decided by this

common judgment.

3. The respondents filed two separate suits for specific performance in respect of separate flats. The suits were filed sometime in February 2011. The defendant first appeared in the suits on 21st February 2011. The suits proceeded to a hearing on the plaintiffs' notice of motion for interim relief, which were finally disposed of on 20th July 2017. Thereafter, the defendant, i.e. the present petitioner, filed Notice of Motion No. 3501 of 2018 in Suit No. 423 of 2011 and Notice of Motion No. 3502 of 2018 in Suit No. 424 of 2011 for condonation of delay of 2754 days in filing the written statement. These notices of motion were strongly opposed by the plaintiffs on the ground that the defendant had filed an affidavit-in-reply to the notice of motion for interim relief by dealing with the merits of the plaint. The plaint was served upon the defendants long back, and they participated in the hearing of the notice of motion by filing the detailed reply. It was thus contended on behalf of the plaintiffs that the appearance filed on behalf of the defendant at the stage of the notice of motion for interim relief, and the reply filed by the defendant dealing with the plaint, would amount to a

waiver of service of writ of summons.

4. The plaintiffs relied upon the decision of the Division Bench of this Court in Appeal No. 616 of 2011 in the case of ***Meena Ramesh Lulla and Ors Vs. Omprakash A. Alreja and Ors***[1]***.*** The trial court held that, in view of the legal principles settled in the decision of ***Meena Ramesh Lulla*****,** the service of the writ of summons was complete, and, in the absence of any satisfactory reasons for the delay of more than seven years, the application for condonation of delay cannot be allowed. Thus, in the absence of any explanation to justify the delay of more than seven years, the trial court rejected the notice of motion for condonation of delay in filing the written statement.

SUBMISSIONS ON BEHALF OF PETITIONER (DEFENDANT):

5. Learned senior counsel appearing for the petitioner submitted that the writ of summons in both the suits was never served upon the petitioner. The notice of motion seeking interim injunction against the petitioner was disposed of on 20th July 2017. Thereafter, immediately, the petitioner

1 **Appeal No. 616 of 2011 Dated 21/9/2011**

filed the notice of motion seeking condonation of delay in filing the written statement. Hence, despite non-service of the writ of summons, the petitioner took steps to file the written statement. The trial court should have permitted the defendant/petitioner to file the written statement, as the period of limitation under Order VIII Rule 1 of the Code of Civil Procedure, 1908 ("CPC") had not commenced. Learned senior counsel for the petitioner relied upon Chapter VI of the Bombay City Civil And Sessions Court Rules 1948 ("said Rules") to support his submissions that unless the writ of summons is served, the time to file the written statement would not commence.

6. Learned senior counsel for the petitioner submitted that under Order VIII Rule 10 of the CPC, the procedure is provided for when a party fails to present the written statement, though called for by the court. In the present case, neither was the writ of summons served nor was the defendant ever called upon to file the written statement. Hence, mere appearance of the defendant in the suit and the filing of a reply to the application for interim relief would not amount to service of the writ of summons or a waiver of

service of the writ of summons. To support his submissions, learned senior counsel for the petitioner relied upon the Apex Court's decisions in ***Sushil Kumar Sabharwal Vs. Gurpreet Singh and Ors***[2] and ***Auto Cars Vs. Trimurti Cargo Movers Private Limited and Ors***[3] and this Court's decisions in ***Tardeo Properties Pvt. Ltd. Vs. Bank Of Baroda***[4] and ***Metro Ortem Ltd. Vs. Maharashtra State Road Transport Corporation***[5]***.***

SUBMISSIONS ON BEHALF OF RESPONDENTS (PLAINTIFFS):

7. Learned counsel for the respondent (plaintiff) supported the impugned orders. He submits that the very fact that the petitioner applied for condonation of delay in filing the written statement would mean that the defendant had waived the service of writ of summons. The entire plaint, with annexures, was served upon the defendant, and the same was dealt with in the reply filed in response to the plaintiff's notice of motion seeking interim relief. Hence, in view of the waiver of service of writ of summons, the period to file written statement as contemplated under Order VIII Rule 1

2 **(2002) 5 SCC 377**
3 **(2018) 15 SCC 166**
4 **2007 SCC OnLine Bom 614**
5 **2022 SCC OnLine Bom 7238**

commenced.

8. To support his submissions, learned counsel for the respondents relied upon the decision in ***Meena Ramesh Lulla*** and ***Suresh Daduram Abnave Vs. Municipal Corporation of Greater Mumbai and Ors[6].*** He submits that the Division Bench has taken the view that once the party is served with the plaint and the annexures and has dealt with the contentions while filing the reply to the plaintiff's interim application, the formal service of writ of summons is not necessary. This court has taken the view that service of the writ of summons would be a redundant formality, taking up needless judicial time in passing directions, when the defendant is served with the plaint and the annexures and has appeared in the application for ad-interim or interim relief, either personally or through the advocate. The writ of summons is served together with a copy of the plaint and its annexures, enabling the defendant to respond to the claim. Hence, it is held that when the notice for ad-interim and the interim application are served upon the defendant along with a copy of the plaint and the annexures, no further service of the writ of summons is necessary.

6 **AO No. 807/2022 dated 23/10/2013**

9. Learned counsel for the plaintiffs submitted that in the present case, there is no dispute that the plaint, along with the annexures, was served upon the defendant, and that the defendant dealt with the merits of the suit by filing a reply to the interim application. However, the defendant did not bother to file a written statement for more than seven years. Hence, at this stage the defendant is not entitled to contend that since there is no formal service of the writ of summons, the period for filing the written statement under Order VIII Rule 1 has not commenced.

10. Learned counsel for the plaintiffs submitted that the view taken by the learned Division Bench of this court squarely applies to the facts of the present case. Hence, the trial court has rightly rejected the petitioner's application for condonation of delay in filing the written statement. He submitted that even otherwise the affidavit in support of the notice of motion is bereft of any explanation for not filing the written statement for the period of more than seven years. Hence, for want of any satisfactory reasons, the delay of more than seven years is rightly not condoned by the trial court. Learned counsel for the plaintiffs, therefore, submits

that, in view of the well-established legal principles, the impugned orders do not warrant any interference by this court.

CONSIDERATION OF THE SUBMISSIONS AND ANALYSIS:

11. I have perused the papers of the writ petitions. There is no dispute that the plaint and the annexures were served upon the defendant, and that the defendant appeared in the suit on 21st February 2011. The defendant filed a detailed reply dealing with the notice of motion for interim relief and the plaint. Admittedly, neither was the defendant served with the writ of summons nor was any order passed directing the defendant to file the written statement.

12. The Division Bench of this court in ***Meena Ramesh Lulla*** was dealing with an intra-court appeal challenging the order passed by the learned single judge dismissing the plaintiff's notice of motion to set aside the dismissal of the suit for default and restore the suit. With reference to the steps required to be taken for service of the writ of summons after the defendant appeared and participated in the proceedings for interim relief, this court held that in such

circumstances, service of the writ of summons is a mere formality. This court further held that once service of the writ of summons, along with a copy of the plaint and its annexures, is complete, it would enable the defendant to deal with the plaint on its merits by filing a written statement under Order VIII Rule 1 of the CPC. This court held that the defendant's conduct clearly demonstrated a waiver of service of the writ of summons.

13. Learned senior counsel for the petitioner relied upon the Apex Court's decision in ***Auto Cars*** to support his submissions that the written statement must be filed within 30 days of service of the writ of summons, as provided under Order VIII Rule 1 of the CPC. Hence, he argued that for filing the written statement, service of the writ of summons is necessary, and the period to file the written statement would commence only on service of the writ of summons and not in any other manner.

14. In ***Auto Cars***, the order under challenge was the refusal to set aside an ex exparte decree. In the said case, the summons was served by substituted service by publication in a newspaper. The Apex Court held that the

service of summons on the defendants without mentioning a specific day, date, year, and time therein cannot be held to be "*summons duly served*" on the defendants within the meaning of Order 9 Rule 13 of the Code. It is further held that the object behind sending the summons is to apprise the defendant about the filing of a case by the plaintiff against him, to serve the defendant with the copy of the plaint and to inform the defendant about actual day, date, year, time and the particular court so that he is able to appear in the court on the date fixed for his/her appearance.

15. Learned senior counsel for the petitioner argued that the view taken by the Division Bench in ***Meena Ramesh Lulla*** is in the context of dealing with the appeal filed on the original side of this court, by referring to the Bombay High Court, Original Side Rules, 1980. Hence, according to the learned senior counsel for the petitioner, in view of the legal principles settled by the Apex Court in ***Auto Cars,*** the view taken by the Division Bench would not have any binding effect to hold that the period for filing a written statement would commence on filing of appearance by the defendant.

16. The issue regarding the scope of Order IX Rule 13 and

6 of the CPC for setting aside an *ex parte* decree on the ground of non-service of summons was addressed by the Apex Court in ***Sushil Kumar Sabharwal***. It is held that mere irregularity in service of writ of summons would not give an opportunity to the defendant to appear and contest the suit at a later stage. However, it is held that, while exercising its discretion to pass an *ex parte* decree, the court must be satisfied that due service of summons has been proved.

17. In the present case, the defendant was served with the plaint and annexures and had also dealt with the same by filing a reply to the interim application. The defendant had filed an appearance by filing the Vakalatnama. Thus, even if the objects of service of summons as enumerated in the decision of ***Auto Cars*** were satisfied, there is no service of a writ of summons for the purpose of commencing the time to file a written statement as provided under Order VIII Rule 1 of the CPC. Therefore, the question to be decided in the present case is whether the appearance of the defendant and filing of reply to the interim application would constitute a waiver of service of the writ of summons, and whether the time provided under Order VIII Rule 1 of the CPC to file the

written statement commenced and, if yes, on which date.

18. Thus, the controversy in the present petition is whether the petitioner's conduct and the filing of an application for condonation of delay in filing the written statement would amount to a waiver of service of the writ of summons. If the defendant's conduct is accepted as a waiver of service of the writ of summons, the issue needs to be decided as to whether there is a satisfactory explanation for not taking steps to file the written statement for more than seven years, and permit the defendant to file the written statement at this stage.

19. The period for filing the written statement is provided under Order VIII Rule 1 of CPC, which reads as under :-

"1. Written Statement.—*The Defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence:*

Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in

writing, but which shall not be later than ninety days from the date of service of summons."

20. Thus, a plain reading of the said rule shows that the period to file the written statement would commence upon service of the writ of summons. As per Rule 51 of Chapter V of the said Rules, the summons to a defendant to appear and answer shall be in the forms prescribed thereunder. As per the 2022 amendment, the summons to a defendant to appear and answer shall be in accordance with the provisions of Order V, Rules 1 and 2 (Bombay amendment) of the CPC and in one of the forms prescribed under the said rules. Order V Rules 1 and 2 (Bombay amendment) of the CPC applicable to non-commercial division suits, read as under:

" 1. Summons.- (1) When a suit has been duly instituted, a summons may be issued to the defendant to appear and answer the claim and to file the written statement of his defence, if any, within thirty days from the date of service of summons on that defendant:

Provided that no such summons shall be issued when a defendant has appeared at the presentation of plaint and admitted the plaintiff's claim:

(2) A defendant to whom a summons has been issued under sub-rule (1) may appear:-

(a) in person, or

(b) by a pleader duly instructed and able to answer all material questions relating to the suit, or

(c) by a pleader accompanied by some person able to answer all such questions.

(3) Every said summons shall be signed by the Judge or such officer as he appoints, and shall be sealed with the seal of the Court.

2. Copy of plaint to accompany summons.- Every summons, except in the case of one issued by the City Civil Court, shall be accompanied by a copy of the plaint with annexures or if so permitted, by concise statement."

21. As per Rule 54 of the said Rules, no suit for final disposal shall be heard until after 30 clear days from the service of writ of summons. The words 'until after 30 clear days from the service of writ of summons' are inserted by the 2022 amendment. However, even the unamended rule provided that the hearing of the suit shall not take place until certain days after service of summons. Thus, to proceed with the hearing of the suit, service of the writ of summons is required. Rules 59 and 60 of the said Rules read as under:

"59. Notice of written statement in summons when called for.- When a written statement shall be called for from a defendant in the first instance, notice to that effect shall be given in the margin of the writ of summons calling on the defendant within thirty days from the service thereof (unless the Judge shall otherwise order) to file his written statement and serve a copy thereof on the plaintiff or his Advocate.

60.- Judgment for want of written statement.- The procedure as provided in Order VIII Rule 10 of the Code of Civil Procedure shall be followed for the Judgment for want of written statement."

22. In Rule 59, the words 'thirty days' have been substituted for the words 'four weeks' by the 2022 amendment. The said Rule 60 is substituted with effect from 9th July 2022. Prior to its substitution, the said Rule 60 read as under:

"60. Judgment for want of statement.- Application for judgment for want of written statement shall be made by motion on notice to the opposite party, but no such motion shall be made before the date on which the summons is returnable. On the filing of an affidavit of service of the notice of motion, the suit shall be set down on the daily board for the purpose of such application. This rule shall not apply to commercial causes, which shall be governed by rule 118."

23. Rule 61 of the said Rules provides for setting down the

suit as undefended if the written statement is not filed within thirty days from service of the writ of summons. However, the said Rule also provides the court with discretion to permit the filing of the written statement. In the said rule, the thirty-day period was substituted for the words ‘on or before the day fixed’.

24. In ***Tardeo Properties***, the learned Division Bench of this Court while dealing with the Bombay High Court (Original Side Rules) held that in order to enable the defendant to file the written statement, there has to be a writ of summons served upon the defendant, specifying the period within which he can file the written statement and such writ of summons can be served upon the Advocate for the defendant. However, it is held that the mere filing of the vakalatnama in the Court does not lead to the conclusion that the defendant has been served with the writ of summons. It is held that the requirement of law in terms of the rules on the Original Side is that in order to enable the defendant to place the written statement on record, there has to be an order of the Court either in the form of a writ of summons or a specific order extending the time to file the written statement. It is

thus held that, in the absence of service of a writ of summons or an order directing the defendant to file a written statement, there would be no occasion for the defendant to file a written statement. The contentions of the defendants were accepted by holding as under in ***Tardeo Properties*** :

"**17.** The learned Counsel appearing for the appellants, therefore, is justified in contending that on the Original Side, it is mandatory for the Court to issue writ of summons to enable the defendant to file the written statement. It is true that in terms of Rule 88, the written statement has to be filed within twelve weeks from the service of the writ of summons but the period of twelve weeks, as specified, commences from the service of the writ of summons and not otherwise. Being so, mere filing of the vakalatnama would not begin the period of twelve weeks for filing of the written statement nor the defendant of his own can file written statement, without the permission of the Court. ***It is not a matter of right for any party to the proceedings to place on record pleadings in the suit. The pleadings in the suit are allowed to be placed on record in accordance with the rules framed for that purpose and for taking on record the pleadings on behalf of the defendant, initially the issuance of writ of summons for that purpose is absolutely necessary. Undoubtedly, such a period can be extended by specific order in case the defendant fails to file the written statement within the specified period and further seeks extension of such period."***

emphasis applied by me

25. Thus, in the light of the legal principles settled in ***Tardeo Properties*** and in view of Order V Rule 1 (1), Order VIII Rule 1 of the CPC read with the said Rules applicable to the City Civil Court, it is clear that the period to file the written statement shall commence from the date of service of the writ of summons. Therefore, when a writ of summons is not served on the defendant or the defendant has not expressly waived the service of writ of summons, or when the court has otherwise not issued any directions to file a written statement, it cannot be said that the period to file a written statement as provided under Order VIII Rule 1 of CPC has commenced. Therefore, in such cases, permission to file a written statement cannot be refused on the ground that the time to file it has elapsed.

26. In ***Metro Ortem***, the learned Single Judge of this Court followed the legal principles in the Apex Court's decisions in ***Auto Car*** and ***Sushil Kumar Sabharwal*** and Division Bench of this Court's decision in ***Tardeo Properties Pvt Ltd*** and held that the appearance of an Advocate and the filing of a Vakalatnama would not dispense with or waive the

requirement to serve the writ of summons, and the filing of a Vakalatnama cannot be considered proof of service of summons.

27. The decision of the learned Division Bench of this court in ***Meena Ramesh Lulla*** concerned the dismissal of the suit for failure to serve the writ of summons. In the facts of the said case, since the defendant had appeared and participated in the proceedings and was admittedly served with the plaint along with the annexures, this court held that the service of writ of summons in such a case would be of formality and thus, for want of taking steps to serve the writ of summons, the suit could not have been dismissed for non-prosecution. Consequently, the order passed by the learned Prothonotary and Senior Master, dismissing the suit for default, was set aside, and the suit was restored. In the context of deciding this controversy regarding the purpose of service of writ of summons, this court referred to the provisions of Order VIII Rule 1 of the CPC. Thus, the factum of waiver of service, the factum of the defendant's personal appearance or through the advocate, or even the filing of the Vakalatnama, is dealt with to decide the challenge to the

dismissal of the suit for not taking any steps for service of the writ of summons. Thus, the issue of commencement of the time to file the written statement, as contemplated under Order VIII Rule 1 of the CPC, was not before the Division Bench.

28. In ***Commissioner of Income Tax vs. Sun Engineering Works (P) Ltd.***[7]***,*** the Apex Court held that a judgment cannot be read out of context, and it is not permissible to pick out a word or a sentence from the judgment divorced from the context of the question under consideration and treat it as the complete law declared by the Court. It is held that the judgment must be read as a whole, and the observations in the judgment must be considered in light of the questions before the Court.

29. In ***Union of India and Others vs. Dhanwanti Devi and Others***[8]***,*** the Apex Court held that a word, clause, or sentence in a judgment cannot be regarded as a full exposition of law, and that it is necessary to determine what would constitute a binding precedent. The Apex Court held that not everything a Judge says while delivering judgment

7 (1992) 4 SCC 363
8 (1996) 6 SCC 44

constitutes a precedent. The only thing in a Judge's decision that binds a party is the principle on which the case is decided; for this reason, it is important to analyse a decision and isolate the *ratio decidendi*. The Apex Court held that the enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent.

30. It is necessary to analyse the authoritative principles laid down in ***Meena Ramesh Lulla***, keeping in mind the legal principles laid down by the Apex Court as discussed in the above paragraphs. In ***Meena Ramesh Lulla,*** the issue was of the dismissal of the plaintiff’s notice of motion to set aside the dismissal of the suit for default and restore the suit. In the facts of that case, service was waived when the ad-interim application was considered, and the notice of motion was made returnable by an order passed by the court. With reference to the same, this court held that the defendant's conduct of filing an appearance and a reply to the interim application clearly demonstrated a waiver of service of the writ of summons. Hence, the observations of the Division Bench in ***Meena Ramesh Lulla*** regarding filing of written

statement within thirty days from waiver of service of summons cannot be stretched to mean that the period of thirty days provided under Order VIII Rule 1 of the CPC would commence from the date of filing of appearance of the defendant in every case.

31. The issue of the commencement of the time to file a written statement, as provided under Order VIII Rule 1 of the CPC, was not before the Division Bench. Hence, the observations in ***Meena Ramesh Lulla*** cannot be termed as an authoritative law that the time to file a written statement would commence from the date of filing the appearance through an advocate or a reply to an interim application and that such conduct would ipso facto amount to a waiver of service of the writ of summons in every case. The decision of another Division Bench of this Court in ***Tardeo Properties*** expressly dealt with the provisions of Order VIII of the CPC in the context of service of a writ of summons upon the defendant as a condition precedent to passing a decree for failure to file the written statement. The decision in ***Tardeo Properties*** was not brought to the notice of the Division Bench in ***Meena Ramesh Lulla***. Hence, the proposition of

law declared in ***Tardeo Properties*** squarely applies to the controversy in the present case as a binding precedent.

32. Another judgment of the learned Single Judge of this Court in ***Suresh Abnave***, relied upon by the learned counsel for the plaintiffs, is on the issue of restoration of the notice and motion and the suit. In the said case, the suit was dismissed for want of service of writ of summons. The observations in the said decision on Order V and Order VIII of the CPC, and the view expressed that the filing of a vakalatnama by the defendant amounts to service of summons for all purposes, are in the context of restoration of the suit. The issue of the commencement of the time to file a written statement, as provided under Order VIII Rule 1 of the CPC, was not before the learned Single Judge in ***Suresh Abnave.*** Hence, in view of the well-settled legal principles as discussed above, the decision in ***Suresh Abnave*** is not applicable to the present case.

33. In the present case, admittedly, there is no service of the writ of summons as provided under the applicable Rules, as discussed in the above paragraphs. Neither is there any express waiver of service of the writ of summons, nor is there

any order passed directing the filing of a written statement or proceeding with the suit without a written statement. It appears that, as a matter of precaution, the defendant applied for condonation of delay in filing the written statement. Thus, mere filing an application for condonation of delay in filing the written statement does not mean that there was a waiver of service of the writ of summons and, therefore, the period to file the written statement had commenced.

34. Not permitting the defendant to file a written statement would result in forfeiture of the party's right to defend the suit. Hence, to commence the period to file a written statement under Order VIII Rule 1 of the CPC, there must be proof of service of the writ of summons, or an express waiver of service of the writ of summons by the defendant, or the defendant's conduct must expressly indicate a waiver of service of the writ of summons or an order of the Court to file written statement. Mere filing of the Vakalatnama and reply to the application for interim relief would not mean that the period contemplated under Order VIII Rule 1 of the CPC would commence for filing the written statement.

35. Hence, the petitioner's application for condonation of delay in filing the written statement needs to be decided in light of the well-settled legal principles governing the commencement of the period for filing the written statement as contemplated under Order VIII Rule 1 of the CPC. The defendant's application for permission to file the written statement is dismissed on the ground that the time to file it has elapsed and no satisfactory reason is demonstrated to condone the delay. On perusal of the impugned order, the trial court has not recorded any finding of an express waiver of service of the writ of summons. There is also no order passed by the trial court directing the filing of the written statement or proceeding the suit without a written statement. Hence, the defendant cannot be refused permission to file a written statement.

36. It is unfortunate that the suit has remained pending, given the court's technical approach in refusing to permit the defendant to file a written statement. The suit is of 2011, seeking relief in respect of the dispute concerning the provisions under MOFA and the 2009 agreement to purchase flats. If the parties and the advocates had adopted a

pragmatic approach, the suit on the merits would not have remained pending for so many years.

37. For the reasons recorded above, this is a fit case to exercise the jurisdiction under Article 227 of the Constitution of India to interfere with the impugned orders. Hence, the petitions are allowed by passing the following order:

(a) The orders dated 25th April 2019, passed in Notice of Motion No. 3501 of 2018 in Suit No. 424 of 2011, and in Notice of Motion No. 3502 of 2018 in Suit No. 424 of 2011, passed by the City Civil Court, at Mumbai, are quashed and set aside, and the respective Notices of Motions are allowed.

(b) The defendant is permitted to file the written statement in both suits within four weeks from today.

38. In the peculiar facts and circumstances of the case, as discussed in the above paragraphs, the trial court shall endeavour to decide the suits as expeditiously as possible, and the parties shall cooperate for early disposal of the suit without seeking unnecessary adjournments.

[GAURI GODSE, J.]