



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL REVISION APPLICATION NO.116/2024

Laxman Motiram Barai,
aged 57 Yrs., Occ. Business,
R/o Telipura, Mankapur,
Nagpur.

... Applicant
(Original Defendant)

- Versus -

1. Sheikh Kamruzama S/o Mohd Sheikh
Chand, aged 65 Yrs., Occ. Business,
(Since Dead)
through Legal Heirs already on record
- 1a. Smt. Hafiza Sheikh Wd/o Kamruzama
Sheikh, aged 62 Yrs., Occ. Household.
- 1b. Nadeem Sheikh S/o Kamruzama Sheikh,
aged about 41 Yrs.
- 1c. Sanayzad Sheikh s/o Kamruzama Sheikh,
aged about 30 Yrs.
- 1d. Md. Imram Sheikh S/o Kamruzama
Sheikh, aged 37 Yrs.
All 1a To 1d R/o Plot No.99, Datta
Nagar, Mankapur, Ringroad, Nagpur.
- 1e. Zarina W/o Danish
aged 43 Yrs., R/o C/o 301, A-Wing
Aadinath Tarangal, Shivajinagar,
Ratnagiri.
2. Sheikh Rehman S/o Mohd Sheikh Chand,
aged 52 Yrs., Occ. Business.
3. Sheikh Latif S/o Mohd Sheikh Chand,
aged 43 Yrs., Occ. Business.

4. Sheikh Muheeb S/o Mohd Sheikh Chand,
aged 49 Yrs., Occ. Business.

All 2 to 4 R/o Prashant Nagar,
Nagpur - 13.

... Non-applicants
(Original Plaintiffs)

Mr. S.A. Mohta, Advocate for the applicant.

Mr. S.B. Mohta, Advocate for the non-applicants.

CORAM: MRS.VRUSHALI V. JOSHI, J.
DATED: 18.7.2025.

JUDGMENT

Rule. Rule made returnable forthwith. Heard finally
with the consent of learned Advocates for the parties.

2. The applicant has challenged the order passed by 7th
District Judge, Nagpur in Miscellaneous Civil Appeal
No.182/2018 whereby the application for condonation of delay of
2325 days for restoring the civil appeal is allowed.

3. The facts in nutshell are as under:-

The non-applicants have preferred the Civil Suit
No.75/1989 for grant of temporary injunction and execution of
sale deed. The applicant has filed the counter claim seeking
possession in said civil suit. The non-applicants have also

preferred the suit for specific performance of contract in addition to the said civil suit as Civil Suit No.588/1990 which suit was proceeded ex parte and decree for specific performance of contract was granted and the sale deed was executed in favour of non-applicants on 4.12.1992. As the suit for specific performance of contract is decreed ex parte without effecting service on applicant and without any knowledge of the filing of suit the non-applicants had withdrawn the suit i.e. R.C.S. No.75/1989, however, the counter claim filed by the applicant was allowed to be continued. The counter claim filed by the applicant was allowed by judgment and decree passed on 20.4.1998 whereby the non-applicants were directed to restore the possession of the property to the applicant. Against the judgment and decree passed on 20.4.1998 the non-applicants had preferred Regular Civil Appeal No.732/1998. The appeal filed by the non-applicants remained pending for more than 13 years. As the non-applicants and their Advocate remained absent continuously the appeal filed by the non-applicants came to be dismissed for

want of prosecution on 2.9.2011. On dismissal of said appeal the non-applicants have filed execution proceedings for execution of decree. In Regular Darkhast No.19/2017 the notices were issued and the non-applicants were served. Thereafter restoration application along with condonation of delay was filed by the non-applicants. The reason given by the non-applicants is that the non-applicant No.1 was in Ratnagiri and he was not knowing about the dismissal of the suit. The trial Court has restored the suit by condoning the delay of 2325 days. Therefore, the applicant has filed this revision application.

4. Learned Advocate for the applicant has stated that the non-applicants have not filed on record any reason for delay except the non-applicant No.1 there are three other non-applicants, knowing about the pendency of the proceedings, however, they have not taken any efforts to contact the lawyer. Why lawyer has not taken care of said proceedings, is also not mentioned. Except oral statement there is no any evidence to show that during the said period the non-applicant No.1 shifted

to Ratnagiri. Though the non-applicant No.2 was served with notice of execution proceedings in the month of July 2017 the restoration application was filed on 23.2.2018. There is no explanation for delay. Hence prayed to set aside the order passed by the trial Court by allowing this application.

5. Heard both Advocates.

6. The applicant had filed the civil suit along with other two persons. It appears from the record that in application the reason given for the delay is regarding non-applicant No.1 stating that he was the person who was looking after the proceedings and he had shifted to Ratnagiri. The suit which was filed by the non-applicants is withdrawn by them and the counter claim was continued. The application is filed for condoning the delay. It is settled position of law that in absence of any proper explanation for delay, the same cannot be condoned merely for the asking. The explanation has to be reasonable or plausible to enable the Court to exercise judicial discretion. It is observed by this Court in Writ Petition No.6835/2014 (Rajendra Namdeorao Akre V/s.

Rajkumar Bhalerao Balbudhe and another) delivered on 30.6.2015 that in absence of any explanation whatsoever and considering the approach of the respondents of not taking remedial steps even after the earlier order dismissing the appeal clearly indicates their negligence and lack of diligence in prosecuting the proceedings. It is further well settled that the reason for delay being caused is more material than the period of delay.

7. It is observed by this Court in Hiren Ashwin Shah V/s. State of Maharashtra and another reported in 2024 LawSuit (Bom) 410 as under:-

“12. There is a subtle yet significant difference in the approach of the court when the court at the first instance has exercised its discretion to condone the delay and in cases where the application for condonation of delay is rejected by such court. In the former case, since the court below has exercised its discretion in a positive manner to condone the delay, ordinarily the superior court should not interfere with such a finding, as it has the potentiality to promote the cause of substantive justice. However, where the court at the first instance refuses to condone the delay, the superior court is at liberty to reassess the entire matter of condonation of delay and arrive at its

own conclusion, de hors the conclusion arrived at by the court below.”

8. After considering the above said judgments and the judgment in Writ Petition No.97/2022 (Mrs Salcette De Miranda e Borges and another V/s. Mr. Helder Joaquim Das Santos Almas De Miranda and others) delivered on 21.7.2023 relied upon by the non-applicants wherein it is observed by the Hon’ble Supreme Court that when discretion is exercised, the opposite party should not be forgotten that some provisions should be made for costs payable to the opposing party. The non-applicants have stated that the costs is saddled.

9. While deciding the delay it is necessary to consider the sufficient cause for condoning the delay. There is inordinate delay of 2325 days. Why the other non-applicants have not taken any efforts to contact the lawyer is not mentioned and only the reason given is that the applicant No.1 was the only person who was looking after the legal proceedings is not sufficient cause to condone the inordinate delay of 2325 days. The Hon’ble Apex

Court in N. Balakrishnan V/s. M. Krishnamurthy reported in

1998 7 SCC 123 in para 9 to 13 has observed thus:-

“9. *It is axiomatic that condonation of delay is a matter of discretion of the court Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in reversional jurisdiction, unless the exercise of discretion was on whole untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.*

10. *The reason for such a different stance is thus:*

The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. Time limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause.

11. *Rule of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. the object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim Interest reipublicae ut sit finis litium (it is for the general welfare that a period be putt to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.*

12. *A court knows that refusal to condone delay would result foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide Shakuntala Devi Jain V/s. Kuntal Kumari, 1969 AIR (SC) 575a and State of W.B. V/s.*

Administrator, Howrah Municipality, 1972 1 SCC 366.

13. It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quiet a large litigation expenses. It would be a statutory guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss.”

10. As regards the directions to pay the costs is concerned, it is already noted that the costs can be ordered subject to there being any reasonable ground to condone the delay. By imposing of costs all the requirements of furnishing sufficient cause cannot be dispensed with. Costs cannot be substituted for absence of reasons to condone the delay. The rights that had accrued in

favour of the petitioner in view of the decree in his favour are also required to be taken into consideration. Therefore, in absence of any reason which the non-applicants have furnished in the application for condonation of delay, the delay in filing the restoration application could not have been condoned. The present is the case where the impugned order if maintained would result in an order passed without there being any material. A case is made out to interfere in revision jurisdiction. As a result of aforesaid discussion, the instant revision application is allowed. The application for condonation of delay filed by the non-applicants stands dismissed. The order passed by the 7th District Judge condoning the delay is set aside. Rule accordingly.

(MRS.VRUSHALI V. JOSHI, J.)