

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMP(M) No.671 of 2025
Date of Decision: 31st December, 2025

Achhroo Devi Applicant/Appellant
Versus

Yatish Chander. non-Applciant/respondent

Coram

The Hon'ble Mr. Justice Bipin Chander Negi, Judge.

Whether approved for reporting?¹

For the Applicant: Ms. Meera Devi, Advocate.

For the Respondents: Mr. Y.P. Sood, Advocate.

Bipin Chander Negi, Judge (oral).

Application bearing No.9691 of 2025 has been filed under Order IX Rule 9 CPC read with Section 151 CPC for setting aside of order dated 15.07.2022 and for restoration of CMP(M) No.695 of 2020, which had been dismissed for non-prosecution.

2. Appeal in the case at hand was decided by the Additional District Judge-II, Shimla on 31.08.2018. Feeling aggrieved by the aforesaid judgment, one late Smt. Achharoo Devi had preferred a Regular Second Appeal before this Court. The said appeal was barred by one year nine months and fifteen days. For seeking condonation of the aforesaid delay, a CMP(M) bearing No.695 of 2020 had been filed. During the pendency of the proceedings Smt. Achharoo Devi the erstwhile appellant/applicant before this Court in CMP(M) No.695 of 2020, had died. Steps for bringing on record her legal heirs were

required to be taken. It is in the aforesaid backdrop that order dated 15.07.2022 was passed, whereby the application preferred seeking condonation of delay i.e. CMP(M) No.695 of 2020 was dismissed for non-prosecution. The order sought to be recalled is being reproduced herein below:-

“Learned counsel for the applicant states that despite repeated opportunities, legal heirs of sole applicant, who has expired, are not coming forward to impart instructions, as such, he is finding it difficult to comply with order dated 1.6.2022, whereby time was granted to take steps for bringing on record legal representatives of sole applicant.

Since legal representatives of applicant despite repeated communications are not coming forward to impart instructions to the counsel, this court has reasons to believe that they are not interested in pursuing the application, as such, same is dismissed, for non-prosecution.”

3. The application bearing No.9691 of 2025 filed under Order IX Rule 9 read with Section 151 CPC seeking setting aside of order dated 15.07.2022 and for restoration of CMP(M) No.695 of 2020 is accompanied by an application seeking condonation of delay in filing of the same. The application seeking condonation of delay is CMP(M) No.671 of 2025. There is a delay of 853 days in filing of the same. It is this application, which is being considered.

4. Heard counsel for the parties and perused the pleadings, documents appended along with the pleadings.

5. In the application seeking condonation of delay, it has been pleaded that the present applicant had no knowledge of

the present proceedings filed by late Smt. Achharoo Devi. Other than the aforesaid, the fact that the present applicant was undergoing treatment has been pleaded. Some medical record in support thereof has been placed on record.

6. Per contra, learned counsel for the non-applicant in the reply filed has categorically stated that the present applicant was the Power of Attorney holder for late Smt. Achharoo Devi both before the learned trial Court and the First Appellate Court in the case at hand. Proceedings before the First Appellate Court and the trial Court were instituted by late Smt. Achharoo Devi through the present applicant.

7. Other than the aforesaid, in the application filed seeking condonation of delay i.e. CMP(M) No.695 of 2020, it had been categorically asserted by Smt. Achharoo Devi that for the purpose of preferring the Regular Second Appeal, she was dependent upon the present applicant i.e. her daughter. However, when she did not file the appeal, it is then that late Smt. Achharoo Devi was forced to file the appeal and therefore, delay in filing the appeal had occurred.

8. At the very outset, it would be appropriate to refer to the authoritative pronouncement of the Apex Court ***in SLP (C) No.17575 of 2023 title Thirunagalingam vs. Lingeswaran & Anr.*** decided on 13.05.2025, relevant extract whereof is being reproduced herein below;

"Further, this Court has repeatedly emphasized in several cases *that* delay should not be condoned merely as an act of generosity. The pursuit of substantial justice must not come at the cost of causing prejudice to the opposing party. In the present case, the respondents/defendants have failed to demonstrate reasonable grounds of delay in pursuing the matter, and this crucial requirement for condoning the delay remains unmet".

9. Other than the aforesaid, it would be appropriate to refer to case reported ***as Basawaraj v. Land Acquisition Officer, (2013) 14 SCC 81*** for the legal propositions laid therein qua law of limitation.

"12. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. "A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation." The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim dura lex sed lex which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute.

13. The statute of limitation is founded on public policy, its aim being to secure peace in the community, to suppress fraud and perjury, to quicken diligence and to prevent oppression. It seeks to bury all acts of the past which have not been agitated unexplainably and have from lapse of time become stale. According to Halsbury's Laws of England, Vol. 28, p. 266:

"605. Policy of the Limitation Acts.—The courts have expressed at least three differing reasons supporting the existence of statutes of limitations namely, (1) that long dormant claims have more of cruelty than justice in them, (2) that a defendant might have lost the evidence to disprove a stale claim, and (3) that persons with good causes of actions should pursue them with reasonable diligence."

An unlimited limitation would lead to a sense of insecurity and uncertainty, and therefore, limitation prevents disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence or laches. (See Popat and Kotecha Property v. SBI Staff Assn., Rajender Singh v. Santa Singh and Pundlik Jalam Patil v. Jalgaon Medium Project.)

14. In P. Ramachandra Rao v. State of Karnataka this Court held that judicially engrafting principles of limitation amounts to legislating and would fly in the face of law laid down by the Constitution Bench in Abdul Rehman Antulay v. R.S. Nayak."

10. Admittedly, the delay in the case at hand is of 853 days. The length of delay is immaterial. The condonation of delay is a discretionary power. Exercise of discretion must necessarily depend upon the sufficiency of cause shown and the degree of its acceptability thereof. The expression "sufficient cause" is to be duly examined from the view point of a reasonable standard of a cautious man. In this context, "sufficient cause" means that the party should not have acted in a negligent manner or there was a want of bona fide on its part (***Basawaraj v. Land Acquisition Officer, (2013) 14 SCC 81***).

11. The Court must distinguish between an 'explanation' and 'excuse'. In this respect, it would be appropriate to refer a judgment reported as **Sheo Raj Singh (deceased) through Legal Representatives & Others v. Union of India and Another, 2023 (10) SCC 531**. The relevant extract of the same are as under:

".....Of course, the courts must distinguish between an 'explanation' and an 'excuse'. An 'explanation' is designed to give someone all of the facts and lay out the cause for something. It helps clarify the circumstances of a particular event and allows the person to point out that something that has happened is not his fault, if it is really not his fault. Care must however be taken to distinguish an 'explanation' from an 'excuse'. Although people tend to see 'explanation' and 'excuse' as the same thing and struggle to find out the difference between the two, there is a distinction which, though fine, is real.

32. An 'excuse' is often offered by a person to deny responsibility and consequences when under attack. It is sort of a defensive action. Calling something as just an 'excuse' would imply that the explanation proffered is believed not to be true. Thus said, there is no formula that caters to all situations and, therefore, each case for condonation of delay based on existence or absence of sufficient cause has to be decided on its own facts. At this stage, we cannot but lament that it is only excuses, and not explanations, that are more often accepted for condonation of long delays to safeguard public interest from those hidden forces whose sole agenda is to ensure that a meritorious claim does not reach the higher courts for adjudication."

12. "Want of Diligence" or inaction can be attributed to a litigant when something is required to be done by him is not done. In this respect, it would be appropriate to refer to **Katari**

Suryanarayana v. Koppiseti Subba Rao, (2009) 11 SCC

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"Want of 'diligence' or 'inaction' can be attributed to an appellant only when something required to be done by him, is not done. When nothing is required to be done, courts do not expect the appellant to be diligent."

13. From a perusal of order dated 15.07.2022, whereby the application seeking condonation of delay in filing the Regular Second Appeal had been dismissed for non-prosecution, it is evident that despite repeated communications made by the counsel appearing on behalf of deceased Smt. Achharoo Devi, no legal representative had come forward to impart the instructions. The applicant in the case at hand was the Power of Attorney holder of late Smt. Achharoo Devi, both before the learned trial Court and the learned First Appellate Court, being the daughter. Even before this Court as per the averments made in the application CMP(M) No.695 of 2025 filed by late Smt. Achharoo Devi for seeking condonation of delay in filing the Regular Second Appeal, it has been categorically averred that the present applicant had been tasked with the filing of the Regular Second Appeal, however when she did not file the same, it is then that late Smt. Achharoo Devi was forced to filing the Regular Second Appeal belatedly before this Court. The applicant also happens to be the daughter of late Smt. Achharoo Devi.

14. In the aforesaid backdrop, the applicant can't be heard to say that she was not aware of the present proceedings. The medical record whereupon reliance is placed by the applicant is sporadic, intermittent does not reflect hospitalization, only depicts sporadic visits to the hospital for treatment. No explanation is forthcoming, as to why the applicant could not file the appeal within the period of limitation. The reasons stated in the application best be termed to the lame excuses and would not qualify the test of sufficient cause.

15. Much time has elapsed since the decision of the First Appellate Court. Issues settled and decided by Courts should not be sought to be disturbed after passage of sufficient time as parties must be allowed live in peace and certainty

16. For the foregoing reasons, I see no reason to condone the delay in filing the appeal, therefore, the present application is dismissed being devoid of merit.

(Bipin Chander Negi)
Judge

31st December, 2025
(Gaurav Rawat)