

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 206 OF 2025**

1. Mr. Uttam Agatrao Bhosale,
Age; 75 years, Occ. Farming,
R/at. Nerle, Tal. Karmala
District Solapur.
2. Mr. Somnath Agatrao Bhosale,
Age 65 years, Occ. Farming,
R/at. Nerle, Tal. Karmala,
District Solapur.
3. Mr. Vilas Uttam Bhosale,
Age 40 years, Occ. Farming,
R/at Nerle, Tal. Karmala,
District Solapur.

...Applicants
(Original Defendant
No. 1, 2 and 6)

Versus

1. Mr. Sahaji Agatrao Bhosale,
Age 55 years, Occ. Farming,
R/at. Nerle, Tal. Karmala,
District Solapur.

...Respondent
(Original Plaintiff)

Mr. Bhushan Jadhav a/w Siddheshwari Chawan i/b Rajendra
Ambhule, Advocate for the Applicants.

Mr. Shardul Diwan, Advocate for the Respondent.

CORAM : ASHWIN D. BHOBE, J.

DATE : 27th August, 2026.

Oral Judgement :

1. Heard Mr. Bhushan Jadhav, learned Advocate for the Applicants and Mr. Shardul Diwan, learned Advocate for the Respondent.

2. By this Civil Revision Application under Section 115 of the Code of Civil Procedure, 1908 (“C.P.C.”), the Applicants assail the Order dated 20.12.2024 passed by the District Judge-1, Barshi (“District Court”), which allowed the Civil Miscellaneous Application No. 113 of 2023, filed by the Respondent, thereby condoning the delay in filing an Application seeking the Restoration of the Civil Appeal No. 78 of 2017, subject to payment of costs of Rs. 2000/- by the Respondent (“impugned order”).

3. In brief, the facts of the case are that the Respondent (Plaintiff) instituted Regular Civil Suit No. 152 of 2009 for partition before the Civil Judge, Junior Division, Karmala, Solapur (“Trial Court”), seeking partition of the suit properties. The Defendants in the suit are the family members of the Respondent.

4. By Judgment and Decree dated 29.05.2017, the Regular Civil Suit No. 152 of 2009 was dismissed. Dissatisfied with the dismissal of the

Regular Civil Suit No. 152 of 2009, the Respondent filed a Regular Civil Appeal No. 78 of 2017 before the District Court.

5. The Regular Civil Appeal No. 78 of 2017, filed by the Respondent, was dismissed for default due to the non-appearance of the Respondent and his Advocate.

6. Civil Miscellaneous Application No. 113 of 2023 was filed by the Respondent seeking condonation of a delay of 10 months and 27 days in filing an Application for the restoration of Regular Civil Appeal No. 78 of 2017.

7. By the impugned order, the District Court, for the reasons recorded therein, deemed it fit and proper to exercise discretion in favour of the Respondent by condoning the delay of 10 months and 27 days and restoring Regular Civil Appeal No. 78 of 2017.

8. The Applicants (Defendant Nos. 1, 2 and 6), aggrieved by the impugned order, are before this Court.

9. Mr. Bhushan Jadhav, learned Advocate for the Applicants, submits that Civil Miscellaneous Application No. 113 of 2023 fails to disclose any cause, let alone sufficient cause, for seeking indulgence

under Section 5 of the Limitation Act, 1963. He further submits that in the absence of a proper explanation, the Application should have been dismissed by the District Court.

10. Mr. Shardul Diwan, learned Advocate for the Respondent, states that the Respondent has filed two (2) applications, namely, an application seeking condonation of delay in filing the restoration application (Civil Miscellaneous Application No. 113 of 2023) and a separate application seeking restoration of Regular Civil Appeal No. 78 of 2017. He submits that the reasons for seeking the reliefs in both applications are the same. He further submits that the impugned order has rejected the application seeking condonation of delay in filing the restoration, whereas the other application is pending consideration.

11. Mr. Shardul Diwan, learned Advocate for the Respondent, submits that it was a bona fide mistake on the part of the Respondent as well as his Advocate that the date fixed in Regular Civil Appeal No. 78 of 2017 was missed, resulting in non-appearance. He submits that the Respondent is earnestly interested in pursuing the challenge to the decree in Regular Civil Appeal No. 78 of 2017 and had at no point in time any intention to abstain from appearing before the District Court. He submits that the delay in filing the Application for restoration of

Regular Civil Appeal No. 78 of 2017 is bona fide. He submits that the cost imposed by the impugned order has been paid by the Respondent to the Applicants and the Applicants have received the said costs.

12. Perused the records placed in the file of this Application, with the assistance of the learned Advocates for the parties.

13. A perusal of the reply dated 21.02.2024, filed by the Applicants before the District Court in opposition to the Civil Miscellaneous Application No. 113 of 2023 indicates that the Applicants do not allege malafide against the Respondent.

14. In response to a query to Mr. Bhushan Jadhav, learned Advocate for the Applicants, to point out any malafide allegations in the reply or, for that matter, in this Revision Application in the context of the delay/reasons given by the Respondent for seeking condonation of delay, he answers in the negative.

15. In the absence of mala fides in the reply, i.e. any ground or allegation that the Respondent would have gained by delaying the filing of the Civil Miscellaneous Application No. 113 of 2023, there is no reason to disbelieve the Respondent's bonafides in the cause shown for seeking condonation.

16. The condition precedent for condonation of delay is the existence of sufficient cause. The Respondent has given reasons for the delay in filing the Civil Miscellaneous Application No. 113 of 2023. The cause shown by the Respondent in Civil Miscellaneous Application No. 113 of 2023 falls within the expression 'sufficient cause'. Moreover, the explanation given by the Respondent does not appear to be concocted or fanciful. Acceptance of the explanation given for delay should be the rule and refusal an exception, when no negligence, inaction, or want of bonafides can be attributed to the defaulting party.

17. In *Esha Bhattacharjee v. Raghunathpur Nafar Academy*¹, in paragraph 21 the Hon'ble Supreme Court has observed as under :-

21. From the aforesaid authorities the principles that can broadly be culled out are:

21.1. (i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

21.2. (ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

21.3. (iii) Substantial justice being paramount and pivotal the

¹ (2013) 12 SCC 649

technical considerations should not be given undue and uncalled for emphasis.

21.4. (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

21.5. (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.6. (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

21.7. (vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.8. (viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may.

21.9. (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

21.10. (x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

21.11. (xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

21.12. (xii) The entire gamut of facts are to be carefully scrutinised and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

21.13. (xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

18. The District Court has accepted the explanation in Civil Miscellaneous Application No. 113 of 2023 as sufficient, thereby resulting in positive exercise of discretion. The delay was condoned subject to payment of costs. The Applicants have received the costs of Rs. 2,000/- awarded by the impugned order from the Respondent without demur. Page No. 79 of this Application records the following endorsement :-

“Received cost of Rs. 2,000/-

(Rupees Two Thousand only)

sd/-

24/12/2024

Adv. For Non applicant”

19. In *N. Balakrishnan v. M. Krishnamurthy*², paragraphs 9 to 14, the Hon’ble Supreme Court has observed as under :-

“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 a want of acceptable

² (1998) 7 SCC 123

explanation whereas in certain other cases, delay of a 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 revisional jurisdiction, unless the exercise of discretion was on wholly 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. The 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. *Rules of limitation are not meant to destroy the rights 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. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights 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 in 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. Kuntal Kumari [AIR 1969 SC 575 : (1969) 1 SCR 1006] and State of W.B. v. Administrator, Howrah Municipality [(1972) 1 SCC 366 : AIR 1972 SC 749] .*

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 the 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 quite large litigation expenses. It would be a salutary 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.*

14. *In this case, explanation for the delay set up by the appellant was found satisfactory to the trial court in the exercise of its discretion and the High Court went wrong in upsetting the finding, more so when the High Court was exercising revisional jurisdiction. Nonetheless, the respondent must be compensated particularly because the appellant has secured a sum of Rs fifty thousand from the delinquent-advocate through the Consumer Disputes Redressal Forum. We, therefore, allow these appeals and set aside the impugned order by restoring the order passed by the trial court but on a condition that the appellant shall pay a sum of rupees ten thousand to the respondent (or deposit it in this Court) within one month from this date.*

20. I do not find any perversity in the impugned order. However, given the delay of 10 months and 27 days in filing the Application, the cost of Rs. 2,000/- is inadequate. In view of the same, the said cost is enhanced to Rs. 12,000/-.

21. Mr. Shardul Diwan, learned Advocate for the Respondent, states that the enhanced amount of Rs. 10,000/- shall be deposited with the District Court in Civil Miscellaneous Application No. 113 of 2023 on or before 25.09.2026. Payment of costs is a condition precedent.

22. If the amount of Rs. 10,000/- is not deposited with the District Court in Civil Miscellaneous Application No. 113 of 2023 on or before 25.09.2026, this Civil Revision Application shall stand allowed, consequently, the impugned order dated 20.12.2024 passed in Civil Miscellaneous Application No. 113 of 2023 shall stand set aside, with costs of Rs. 25,000/- payable by the Respondent to the Applicant.

23. Mr. Shardul Diwan, learned Advocate for the Respondent, has stated that the reasons for seeking restoration of the Regular Civil Appeal No. 78 of 2017 are the same as those in Civil Miscellaneous Application No. 113 of 2023. Given that the Civil Miscellaneous Application No. 113 of 2023 sufficiently explained the delay, perhaps a separate application for the restoration of the Regular Civil Appeal No. 78 of 2017 was not necessary.

24. Mr. Bhushan Jadhav, learned Advocate for the Applicants and Mr. Shardul Diwan, learned Advocate for the Respondent, submit that the parties to Regular Civil Appeal No. 78 of 2017 are senior citizens, some of whom are over 75 years of age and therefore request that the District Court be directed to dispose of the said appeal at the earliest.

25. In view of the request made by Mr. Bhushan Jadhav and Mr.

Shardul Diwan to avoid further delay and as the reasons given by the Respondent for seeking restoration of Regular Civil Appeal No. 78 of 2017 are similar to those in Civil Miscellaneous Application No. 113 of 2023, as submitted by Mr. Shardul Diwan and not contested by Mr. Bhushan Jadhav, learned Advocate for the Applicants, the application seeking restoration pending before the District Court is allowed. Consequently, Regular Civil Appeal No. 78 of 2017 shall stand restored to the file of the District Court, subject to paragraphs 20, 21 and 22 hereinabove.

26. Considering the said facts, i.e. the parties to the Regular Civil Appeal No. 78 of 2017 being senior citizens, the subject matter of the proceedings being a suit for partition and the Appeal being of the year 2017, the District Court is requested to make an endeavor to dispose of the Regular Civil Appeal No. 78 of 2017 expeditiously, on its own merits and in accordance with law, at any rate, within a period of six (6) months from the date of the first hearing fixed in the Regular Civil Appeal No. 78 of 2017, after 25.09.2026 (i.e. the date fixed for the Respondent to comply with the payment of costs). Payment of costs is a condition precedent.

27. Mr. Bhushan Jadhav, learned Advocate for the Applicants and Mr.

Shardul Diwan, learned Advocate for the Respondent, state that the parties shall co-operate with the District Court in the early disposal of the Regular Civil Appeal No. 78 of 2017. Statement accepted.

28. Civil Revision Application No. 206 of 2025 is disposed of in the above terms.

(ASHWIN D. BHOBE, J.)

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