

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4069 OF 2026

Jaymala Navalkishor Didi

... Petitioner

Vs.

Balvant Shrirang Devkar

... Respondent

.....
Adv. Manmath Athalye for the Petitioner (through V.C.)

Adv. Nikhil Wadikar (through V.C.) a/w Mr. Dhananjay A. Utture

.....

CORAM : SHAILESH P. BRAHME, J.

RESERVED ON : 27th AUGUST, 2026.

PRONOUNCED ON : 31st AUGUST, 2026.

FINAL ORDER :-

Heard both sides.

2. The petitioner is questioning judgment and order dated 29.04.2026 passed in Civil Misc. Application No. 33/2023, refusing to condone delay of 3 years 2 months and 59 days for filing application to set aside *ex parte* decree.

3. The respondent had filed Spl. Civil Suit No. 92/2014 for specific performance of contract seeking enforcement of agreement to sell executed by the petitioner in favour of the respondent on 06.06.2011 offering to sell land Gat No. 28/2 for Rs. 15,50,000/-. The respondent is stated to have paid Rs. 7,00,000/- as an earnest amount and ready to pay the balance

amount. The petitioner appeared in the suit. The written statement was not filed in time. The order of 'no written statement' was passed. It was set aside by imposing costs of Rs. 500/-. The cost was also not paid. The matter was proceeded without written statement. The suit was decreed on 02.11.2018.

4. The petitioner filed Civil Misc. Application No. 33/2023 seeking condonation of delay of 3 years 2 months and 59 days for filing application for setting aside *ex parte* decree. On 29.03.2022 respondent filed reply to it. The Trial Court refused to condone the delay by speaking order passed on 29.04.2026, which is assailed in the present petition.

5. Learned counsel for the petitioner submits that the delay is not intentional. Her husband was suffering from cancer, who was looking after the litigation. He died on 08.01.2019. Her son was abroad and there was nobody to look after the petitioner and the litigation. She was also ailing. She is stated to have acquired knowledge in November 2018. It is submitted that the circumstances are beyond her control. The Trial Court should have condoned the delay. It is contended that the lawyer engaged by her did not inform the progress of the suit and she heavily relied upon him, who misrepresented her. It is submitted that from 15.03.2020 there was lockdown due to Covid-2019. The Trial Court is stated to have adopted hyper technical approach in rejecting the application by impugned order.

6. Per contra, learned counsel for the respondent would submit that the decree passed by the Trial Court was not *ex parte*. The petitioner had appeared by engaging lawyer, got set aside *ex parte* order and participated in the proceedings. It is submitted that there are lapses on the part of the petitioner and her lawyer cannot be blamed. It is submitted that an attorney was also engaged by her. The admissions given by her in the cross-examination before the Trial Court are shown to me. It is submitted that the petitioner is well off and no interference is necessary in the present matter.

7. The petitioner appeared in the suit by engaging a lawyer. Adjournments were sought for filing written statement. Despite opportunity, no written statement was filed. Order of 'no written statement' was passed. The petitioner preferred application Exh. 19 to set aside order of 'no written statement'. It was allowed in December 2017 by imposing costs of Rs. 500/-. The order was not complied with and the matter proceeded without reinstatement. The oral evidence of the respondent was considered and the suit was partly decreed on 02.11.2008. Under such circumstances, I have reservation for treating the decree as *ex parte*.

8. The suit land was agreed to be sold for Rs. 15,50,000/-. The respondent paid earnest amount of Rs. 7,00,000/- and showed readiness to pay balance amount. It is mentioned in the application for condonation of delay by the petitioner that her son is in service abroad and she has a daughter also who is occupied in business. She had appointed attorney. I do

not find that the financial condition of the petitioner is penurious, and she was not in a position to keep track with the progress of the suit.

9. The petitioner had engaged a lawyer. Neither she filed written statement nor paid cost which was imposed while setting aside order of no written statement. The cross-examination of her witness elucidates that petitioner and her deceased husband were using mobile. They could have contacted the lawyer for appraising the status of the matter. It was not her case that the amount of Rs.500/- was deposited with the lawyer and the lawyer instead of depositing in court misused it. The cross-examination shows lapses on the part of the petitioner. In her application, the lawyer engaged by her is being blamed. No action is taken against the lawyer. It is equal duty of the client to remain in touch with the lawyer and to take efforts to know the stage of the proceedings. The reasons assigned in the applications are not convincing.

10. It further reveals from the application that petitioner learned about the decree passed in the civil suit in month of November - 2021 when she received notice in execution proceeding. She is stated to have applied for certified copies which are received in February. Surprisingly, undue time is wasted from November to February - 2021. Thereafter, application is filed on 29.03.2022. Petitioner is an educated lady. Her son is in service. Her daughter and the attorney were there to help her. Under such circumstances, I find that delay of 3 years 2 months and 59 days is inordinate and remained

unexplained.

11. The lockdown for COVID-19 started from 15.03.2020 and continued up to 28.02.2022. She filed application C.M.A. No. 33 of 2023 after one year thereafter. The approach of the petitioner appears to be very casual.

12. The respondent has parted with substantial amount and it is legitimate expectation that litigation would end at some point of time. The suit was filed on 28.04.2014. It would cause grave prejudice to the respondent to relegate the parties to the stage of filing of written statement in the trial court. I do not find any illegality in the impugned order. A plausible view has been taken which needs to be confirmed.

13. Reliance is placed by the respondent on the judgment of Hon'ble Supreme Court in the case of ***Pundlik Jalam Patil (D) by Lrs. Versus Exe, Eng. Jalgaon Medium Project & Anr.***¹ The following is the relevant paragraph:

"22. Basically the laws of Limitation are founded on public policy. In Halsbury's Laws of England, 4^a Ed., Vol.28,p.266,para 605, the policy of the Limitation Acts is laid down as follows:

"The courts have expressed at least three different reasons supporting the existence of statutes of limitation, namely, (i) that long dormant claims have more of cruelty than justice in them, (ii) that a defendant might have lost the evidence to dispute the stated claim, (iii) that persons with good causes of actions should pursue them with reasonable diligence."

¹ SLP © Nos.21011-21014 of 2007 dated 03/11/2008.

14. A useful reference can be made to the judgment of Hon'ble Supreme Court in the case of ***Rajneesh Kumar and another Versus Ved Prakash.***² .

Following is the relevant paragraph which is reproduced herinbelow :

"10. It appears that the entire blame has been thrown on the head of the advocate who was appearing for the petitioners in the trial court. We have noticed over a period of time a tendency on the part of the litigants to blame their lawyers of negligence and carelessness in attending the proceedings before the court. Even if we assume for a moment that the concerned lawyer was careless or negligent, this, by itself, cannot be a ground to condone long and inordinate delay as the litigant owes a duty to be vigilant of his own rights and is expected to be equally vigilant about the judicial proceedings pending in the court initiated at his instance. The litigant, therefore, should not be permitted to throw the entire blame on the head of the advocate and thereby disown him at any time and seek relief."

The observations of the Hon'ble Supreme Court are applicable to the present case.

15. I find that the petition sans merit. Hence, it is dismissed.

(SHAILESH P. BRAHME, J.)

² SLP (Civil) No. 935-936 of 2021 dated 21 November 2024.