

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMPMO No. 132 of 2026

Date of decision: 05.08.2026.

Sanjay Kumar ...Petitioner.

Versus

Vijay Kumar & others ...Respondents.

Coram:

The Hon'ble Mr. Justice Romesh Verma, Judge.

Whether approved for reporting?¹

For the petitioner : Mr. Kulbhushan Khajuria,
Advocate.

For the respondents : Mr. Dushyant Dadwal, Advocate,
for respondent No.1.

Romesh Verma, Judge (Oral):

The instant petition has been filed against the impugned order, as passed by the learned Senior Civil Judge, Palampur, District Kangra, H.P., dated 15.12.2025, whereby the application filed by the petitioner/defendant under Order IX Rule 7 CPC for setting aside the ex-parte order dated 01.12.2022, has been rejected.

2. The facts as emerge in the present case are that a suit for specific performance of agreement was filed by the respondent No.1/plaintiff by directing the petitioner /defendant to execute and register the sale deed or transfer the share

¹ ***Whether reporters of Local Papers may be allowed to see the judgment?***

holdings of the defendants in respect to land comprised in khata No. 587, khatauni No. 1090, khasra Kita-6, measuring 0-06-96 hactares (1/2 share) and ½ share of the land comprised in khata No. 586, khatauni No. 1089, khasra No. 2415, measuring 0-02-09 hectares, situated at Mohal & Mauza Ghuggar, Tehsil Palampur, District Kangra, which has been assigned new khata No. 687, khatauni No. 1161, khasra No. 2415, measuring 0-02-09 hectares including house situated upon it and land comprised in khata No. 688, khatauni No. 1162, khasra kita-6, measuring 0-06-96 hectares, total land measuring 0-09-05 hectares, situated in Mohal & Mauza Ghuggar, Tehsil Palampur, District Kangra, H.P. in terms of agreements to sell dated 07.11.2024, 18.12.2015 and 31.05.2018 or in alternative suit for recovery of Rs. 40,00,000/- along with interest and decree of mandatory and permanent prohibitory injunction was also sought by the plaintiff.

3. Admittedly, the said suit bearing Civil Suit No. 76 of 2021 was originally filed before this Court. The said suit came to be contested by the petitioner/defendant. It is the case of the petitioner/defendant that on account of enhancement in the pecuniary jurisdiction of this Court, vide order dated 01.11.2022, this Court remitted the said Civil Suit bearing No. 76 of 2021 to the Court of learned Senior Civil Judge, Palampur

for adjudication with direction that the parties shall appear before the said Court on 01.12.2022. It was specifically mentioned by this Court in the order that no fresh notice shall be issued to the parties by the learned Senior Civil Judge and it shall be the responsibility of the parties to ensure their representation before the said Court.

4. It is the case of the petitioner/defendant that the order which was passed by this Court could not be complied with and on account of absence of the petitioner/defendant, he was proceeded ex-parte, on 01.12.2022. When the case was fixed for final arguments, at that stage, the present petitioner filed an application under Order IX Rule 7 of the CPC for setting aside the ex-parte order, dated 01.12.2022.

5. In the application, it has been averred that due to increase of pecuniary jurisdiction of this Court, the matter was transferred to the Court of learned Senior Civil Judge, Palampur on 01.11.2022. However, the transfer of the case could not be conveyed by the counsel of the petitioner and the details of the transfer and subsequent dates of proceedings remained completely unaware to the petitioner before the said Court.

6. As per petitioner, due to lack of communication gap, he could not appear before the said Court and consequently,

the order dated 01.12.2022 came to be passed.

7. It has been averred in the application that further compounding the difficulty during COVID-19, the present petitioner suffered severe personal hardship, as his brother late Sh. Madan Lal had expired, which caused immense shock to the entire family. Further, it has been stated that the father of the petitioner is more than 90 years old and mother is 85 years old. They were deeply traumatized by the death of their son and fell seriously ill and got bedridden.

8. As per the petitioner, in the month of December 2025, when he personally inquired about the status of the case, then he came to know for the first time that he has been proceeded against ex-parte, on 01.12.2022. Immediately upon gaining the knowledge of ex-parte order, petitioner approached the Court and filed the application with clean hands and bona-fide intentions and without any delay for setting aside the ex-parte order dated 01.12.2022.

9. The said application was vehemently resisted by the respondent/plaintiff vehemently and all the averments as made in the application were specifically refuted.

10. The learned Senior Civil Judge, Palampur, District Kangra, vide its order dated 15.12.2025, dismissed the application as filed by the petitioner/defendant.

11. Feeling dissatisfied, the petitioner/defendant has approached this Court by instituting the present petition, invoking the provisions of Article 227 of the Constitution of India.

12. It is contended by Mr. Khajuria learned counsel for the petitioner/defendant that the impugned order as passed by the learned trial Court is erroneous in the eyes of law as the learned trial Court has not appreciated the factual matrix of the case. Since there was a communication gap between the counsel and the petitioner, therefore, on that count, the absence of the petitioner on the date which was fixed by this Court is neither intentional nor willful but the same has occurred under the unavoidable circumstances. He further submits that the present petitioner cannot be penalized and condemned unheard and at least one opportunity was required to be given to him to join the proceedings so that he can contest the proceedings on merits. He submits that after accepting the present petition, the application filed by the defendant/petitioner under the provisions of Order IX Rule 7 CPC deserves to be allowed.

13. On the other hand, Mr. Dushyat Dadwal, learned counsel appearing for respondent No.1, has vehemently defended the impugned order as passed by the learned Senior

Civil Judge, Palampur, District Kangra. He submits that there is delay of more than three years in filing the application for setting aside the ex-parte order, which cannot be condoned in the attending facts and circumstances of the case. He further submits that the act of the applicant/ petitioner shows that he was negligent in his conduct and no leniency can be shown to him by allowing the present petition. He further submits that the present petition deserves to be dismissed with costs.

14. I have heard the learned counsel for the parties and have also gone through the case file carefully.

15. Admittedly, the plaintiff/respondent had filed the suit for specific performance of agreement(s) before this Court, which was duly contested by the petitioner/defendant by filing written statement. However, on account of enhancement of pecuniary jurisdiction of this Court, this Court, vide its order dated 01.11.2022, relegated the civil suit bearing No. 76 of 2021 to the Court of learned Senior Civil Judge, Palampur for adjudication in accordance with the law. This Court had directed the learned counsel for the parties to appear before the said Court on 01.12.2022 and there was a specific direction that no fresh notice shall be issued to the parties by the learned Senior Civil Judge and it shall be the responsibility of the parties to ensure their representation before the said Court.

16. Perusal of application which has been filed by the present petitioner shows that on account of communication gap, as the information which was sent by the counsel to the petitioner could not be received by the applicant, therefore, under such circumstances, the order dated 01.12.2022 came to be passed. It has been averred in the application that on account of Covid Pandemic, he lost his brother, late Sh. Madan Lal and on that account, his aged parents got seriously ill and they were bedridden.

17. It has been contended by Mr. Khajuria that the present petitioner cannot be penalized on account of the fact that communication which was sent to the petitioner was not received by him and since the said explanation is genuine, authentic and legal, therefore, after accepting the same, the application filed by the present petitioner under Order IX Rule 7 CPC deserves to be allowed.

18. Though, this Court is of the considered opinion that there is a considerable delay of more than three years in filing the application, however, the averments which have been made in the application are legal and valid and the applicant/petitioner has assigned the reason for not appearing before the trial Court. In case the communication as sent by the learned counsel was not received by the petitioner, in that

event, the fault cannot be attributed to him. Courts are meant to do substantial justice and should not be swayed by the technicalities.

19. There is no gainsaying the fact that the discretionary power of the Court must be exercised judiciously and it is not to be exercised in cases where there is gross negligence or want of due diligence on the part of the litigant. The discretion is not supposed to be exercised in the absence of any reasonable, satisfactory and appropriate explanation. As per the judgment of the Hon'ble Apex Court, there should be a liberal, pragmatic, justice-oriented and non-pedantic approach while dealing with such cases. The substantial justice being paramount and pivotal, the technical considerations should not be given undue and uncalled for emphasis. 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. 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.

20. The Hon'ble Apex Court in **SLP (C) No.14974 of 2022** titled as **K.B. Lal (Krishna Bahadur Lal) vs. Gyanendra Pratap and others**, decided on 8th April, 2024, has held as follows:-

“10. There is no gainsaying the fact that the discretionary power of a court to condone delay must be exercised judiciously and it is not to be exercised in cases where there is gross negligence and/or want of due diligence on part of the litigant (See Majji Sannemma @ Sanyasirao v. Reddy Sridevi & Ors. (2021) 18 SCC 384). The discretion is also not supposed to be exercised in the absence of any reasonable, satisfactory or appropriate explanation for the delay (See P.K. Ramachandran v. State of Kerala and Anr., (1997) 7 SCC 556). Thus, it is apparent that the words ‘sufficient cause’ in Section 5 of the Limitation Act can only be given a liberal construction, when no negligence, nor inaction, nor want of bona fide is imputable to the litigant (See Basawaraj and Anr. v. Special Land Acquisition Officer., (2013) 14 SCC 81). The principles which are to be kept in mind for condonation of delay were succinctly summarised by this Court in Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy & Ors., (2013) 12 SCC 649, and are reproduced as under:

“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 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 not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

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.”

(emphasis supplied)

21. Keeping in view the exposition of law, this Court is of the considered opinion that the explanation as given by the present petitioner in the attending facts and circumstances of the case, more so, in view of the fact that the communication as sent by the learned counsel could not be received by the petitioner, it gives credence to the explanation as given in the application. Therefore, the learned trial Court has not exercised the jurisdiction in a legal manner, as a result of which, there shall be failure of justice and the present petitioner shall suffer huge and irreparable loss. Even otherwise, the present respondent can be compensated while allowing the application filed by the petitioner under Order IX Rule 7 of CPC.

22. As observed earlier, no party should suffer on technical grounds and the justice not only should be done but it should be seen to have been done. In the present case, in case, the petitioner is permitted to contest the main case on merits, certainly, the respondent-plaintiff can be compensated.

23. This Court is in agreement with the contention of the learned counsel, Mr. Dadwal that the delay of three years is a huge delay, however, keeping in view the attending facts and circumstances of the case and the reasons which have been assigned in the application, this Court is of the opinion that one opportunity ought to have been granted to the petitioner to join the proceedings in the main case. Therefore, after setting aside the impugned order as passed by the learned Senior Civil Judge, Palampur, District Kangra, dated 15.12.2025, the petitioner is permitted to join the proceedings in the main case from the date when he was proceeded ex-parte. However, the indulgence is being shown only subject to payment of cost of Rs. 75,000/- to be paid by the petitioner to respondent No.1. on the next date of hearing. The parties are directed to appear before the learned Senior Civil Judge, Palampur, District Kangra, on **25.08.2026**.

24. It is contended by the learned counsel for the respondent that since his client is fighting for his cause, especially for grant of decree of specific performance of agreement(s), therefore, some time bound direction may be given to the learned trial Court to take the case to its logical end. This Court hopes and trusts that the learned trial Court

shall decide the case as expeditiously as possible, preferably within a period of one year from today.

25. Needless to say, that in case on the next date of hearing, the amount of cost of Rs. 75,000/- is not paid by the petitioner to respondent No.1, then the impugned order shall revive automatically.

26. With the above observations, the present petition is disposed of. Pending applications, if any, also stand disposed of.

(Romesh Verma)
Judge

5th August, 2026.
(kck)