

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 219 of 2026
Date of decision: 29.09.2026

Ishwar Dutt ...Appellant

Versus

Hema Nand Sharma ...Respondent.

Coram:

The Hon'ble Mr. Justice Romesh Verma, Judge.
Whether approved for reporting?¹

For the appellant : Ms. Ragini Dogra and Mr. Rajul Chauhan, Advocates.

For the respondent : Mr. Vipin Pandit and Mr. Parikshit Shamra, Advocates.

Romesh Verma, Judge (Oral):

The instant regular second appeal has been preferred against the impugned order passed by the learned District Judge, Solan, dated 06.06.2023, whereby application under Section 5 of the Limitation Act for condonation of delay, as filed by the present appellant/defendant, came to be dismissed.

2. The facts, as emerge in the present case, are that the plaintiff/respondent filed a suit for specific performance of agreement and permanent prohibitory injunction in the Court of learned Senior Civil Judge, Solan, District Solan, H.P., on 26.11.2014. As per the

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

case set up by the respondent/plaintiff, the defendant, Ishwar Dutt, is a co-owner in possession of the land comprised in Khewat/Khatauni No. 24/59, Kitta 19, to the extent of 1/24 share, which comes to 1-13 bighas out of a total 39-13 bighas and the defendant is a co-owner in possession of the land comprised in Khata/Khatauni No. 2 min/5, Kitta 15, to the extent of 1/24 share, which comes to 19 biswas out of a total 22-7 bighas. In all, the defendant is a co-owner in possession of 2-12 bighas situated at Mauza Kenthi, Tehsil Kasauli, District Solan, H.P.

3. As per plaintiff, the defendant/present appellant entered into an agreement for sale with the plaintiff/respondent on 14.03.2011 with respect to sale of the suit land for a total sale consideration amount of Rs.1,50,000/-. Out of the total amount, the plaintiff had paid a sum of Rs. 1,00,000/- in cash to the defendant as earnest money towards the sale consideration amount at the time of entering into the agreement dated 14.03.2011. The said agreement was notarized by Notary Public, Smt. Sunita Sharma, on 23.04.2011. The remaining payment of Rs. 50,000/- of the sale consideration was to be paid by the plaintiff to the defendant at the time of execution and registration of the sale deed before the Sub-Registrar, Kasauli, on or before 14.03.2012. However, on 14.03.2012, the defendant/appellant made excuses that he was busy and requested to extend the time for the execution and registration of sale deed. The actual, vacant and physical possession of the suit land was delivered by the defendant to

the plaintiff on 14.03.2011 at the time of entering into the agreement and since then, the plaintiff has been in possession of the suit land. Thereafter, on many occasions, the defendant was requested to execute the sale deed, but he slept over the matter on one pretext or the other.

4. Thereafter, the plaintiff issued a legal notice to the defendant on 19.07.2014 with a request to execute the sale deed in favour of the plaintiff and called upon him to come with the relevant records for the execution of sale deed on 11.08.2014. As per the plaintiff, he remained present in the office of the Sub-Registrar on 11.08.2014 along with an amount of Rs.50,000/- for performing his part of agreement. However, the defendant did not turn up on the said date. On such averments, the plaintiff filed the suit for specific performance of the agreement against the defendant.

4. The case set up by the plaintiff was resisted by the defendant by raising preliminary objections with respect to maintainability, estoppel, acquiescence, conduct, etc. It was admitted by the defendant that the parties entered into an agreement on 09.01.2009 regarding the suit land for the sale consideration of Rs.1,50,000/-, out of which Rs.1,00,000/- was paid as earnest money and Rs.50,000/- was to be paid at the time of the registration of sale deed. It was contended that time was the essence of contract which the plaintiff never honoured. He never approached the defendant for

the execution of sale deed. Therefore, the defendant prayed for the dismissal of the suit.

5. The learned trial Court framed the issues on 07.04.2016 in the following manner:

1. Whether the defendant had entered into an agreement for sale dated 14-3-2011 with the plaintiff for the sale of the suit land, as prayed for? OPP.
2. Whether the defendant had received a sum of ₹ 1 lakh as earnest money at the time of entering of agreement dated 14-3-2011, as prayed for? OPP.
3. Whether the plaintiff is still willing and ready to perform his part of the agreement as prayed? OPP.
4. If the above issues are proved in affirmative, whether the plaintiff is entitled for the specific performance of agreement dated 14-3-2011, as prayed for? OPP.
5. Whether the plaintiff is entitled for the relief of permanent prohibitory injunction, as prayed for? OPP.
6. Whether the present suit is not maintainable, as alleged? OPD.
7. Whether the plaintiff is estopped by his own act, conduct and acquiescence from filing the present suit? OPD.
8. Whether the present suit is time barred as alleged? OPD.
9. Whether the plaintiff has no cause of action, as alleged? OPD.
10. Relief.

6. The learned trial Court, vide its judgment and decree dated 08.05.2018, decreed the suit filed by the respondent/plaintiff for specific performance of agreement dated 14.03.2011, whereby the defendant/appellant was directed to execute the sale deed in favour of the plaintiff qua the suit land upon receiving the remaining sale consideration amount of Rs.50,000/- from the plaintiff within a period of 60 days from the date of passing the judgment.

7. The record shows that the present appellant/defendant preferred a time-barred appeal before the Court of learned District Judge, Solan, along with an application under Section 5 of the Limitation Act, on 11.11.2019.

8. In the application filed by the appellant under Section 5 of the Limitation Act, it was contended that the present appellant met with an accident in the month of June 2018 and sustained injuries in the accident, as his leg was fractured. He remained in the hospital from 13.06.2019 to 21.06.2019 and thereafter, the applicant remained under treatment at MMU, Kumarhatti, where he was operated upon by the doctors and remained admitted from 05.07.2018 to 23.07.2018 as an indoor patient.

9. As per the appellant, after recovering from injuries, he contacted his counsel at Kasauli and inquired about the pendency of the case in the second week of October 2019. It was only thereafter

that the counsel at Kasauli intimated him that the case had been decided and the suit had been decreed on 08.05.2018. The applicant then applied for certified copies of the judgment and decree, which he received on 05.11.2019 and handed over the same to the counsel at Solan for filing the appeal. Therefore, the application for condonation of delay was filed along with the first appeal. It was prayed that the delay of 525 days in filing the appeal may be condoned in view of the facts and circumstances narrated in the application.

10. The said application came to be resisted by the respondent/plaintiff by denying all the averments made in the application and it was prayed that the appeal, being hopelessly time-barred, deserves to be rejected. It was further contended in the reply that no plausible reasons or sufficient grounds were assigned in the application, therefore, the applicant/appellant is not entitled to any relief and the application deserves to be rejected.

11. The learned District Judge, Solan, vide impugned order dated 06.06.2023, dismissed the application filed by the present appellant, holding the appeal to be time-barred.

12. Feeling dissatisfied, the defendant/appellant preferred the regular second appeal before this Court on 23.05.2026, i.e., after about three years.

13. It is contended by Ms. Ragni Dogra and Mr. Rajul Chaunan, learned counsel for the appellant, that the impugned order

passed by the learned District Judge is erroneous and liable to be quashed and set aside. They submit that the impugned order has been passed without taking into consideration the material facts placed on record. They further submit that there are sufficient grounds for condonation of delay in filing the appeal which was filed before the learned District Judge, Solan. They submit that, after accepting the present regular second appeal, the application filed before the learned District Judge deserves to be allowed and after condoning the delay, the appeal filed before the learned District Judge deserves to be restored with a direction to decide the appeal on its own merits.

14. On the other hand, Mr. Parikshit Sharma, learned counsel for the respondent, has defended the impugned order. He submits that the learned District Judge has rightly appreciated the point in controversy and, after taking into consideration the oral as well as documentary evidence placed on record, has rightly dismissed the application, which does not call for any interference. He submits that the learned District Judge has passed a well-reasoned order that warrants no interference in the attending facts and circumstances of the case.

15. I have heard learned counsel for the parties and gone through the record carefully.

16. With the consent of the parties, the present regular second appeal is heard finally on the following substantial question of law:

"Whether the order passed by the learned District Judge, Solan, is erroneous on account of misappreciation and misconstruction of the oral as well as documentary evidence placed on record, and whether the delay in filing the appeal ought to have been condoned in the interest of justice and fair play?"

17. In the present case, the plaintiff/respondent filed a suit for specific performance of agreement dated 14.03.2011 entered into between the parties for a total sale consideration amount of Rs.1,50,000/-, out of which the plaintiff had paid a sum of Rs.1,00,000/- in cash to the defendant as earnest money and the remaining sale consideration was to be paid at the time of execution of the sale deed. As per the case set up by the plaintiff, Hema Nand, despite receiving a sum of Rs.1,00,000/- and despite his readiness and willingness to execute the sale deed, the defendant, on one pretext or the other, failed to honour the agreement to sell entered into between the parties.

18. On the other hand, the said fact has been opposed and refuted by the defendant/appellant, wherein it has been contended that the plaintiff never honoured his part of the contract and never

approached the defendant for execution of the sale deed and since time was the essence of the contract, no relief could be granted to the plaintiff.

19. Admittedly, the judgment and decree was passed by the learned Senior Civil Judge, Kasauli, District Solan, H.P., on 08.05.2018. Against the judgment and decree, the appeal came to be filed by the present appellant along with an application under Section 5 of the Limitation Act on 11.11.2019. Meaning thereby, there was a delay of more than one and a half year in filing the appeal before the learned District Judge, Solan.

20. A perusal of the application shows that the ground which has been taken by the appellant for condonation of delay is that he met with an accident in the month of June 2018 and sustained grievous injuries, as his leg was fractured. As per the appellant, he remained admitted as an indoor patient in the Ortho Ward, Regional Hospital, Solan, from 13.06.2019 to 21.06.2019 and thereafter remained under treatment at MMU, Kumarhatti, as an indoor patient. It was further stated in the application that he remained bedridden up to September 2019 under the constant supervision of MMU Hospital at Kumarhatti. After recovering from the injuries, he contacted his counsel in the second week of October 2019 and it was only then, it transpired that the suit filed by the respondent/plaintiff had been decreed on 08.05.2018. After obtaining the certified copy of the

judgment, which was received on 05.11.2019, the same was handed over to the counsel at Solan for filing the appeal. Hence, the application for condonation of delay in filing the first appeal came to be preferred.

21. In order to substantiate his contention, the defendant/appellant filed his affidavit, Ext. AW-1/A, wherein he stated that he could not file the appeal within the statutory period of limitation as he met with an accident in the month of June 2018 and sustained grievous injuries. He stated that he remained admitted in the Regional Hospital as an indoor patient from 13.06.2019 to 21.06.2019 and thereafter his treatment was conducted at the MMU Hospital situated at Kumarhatti. He underwent surgery and, on that account, remained admitted in the hospital from 05.07.2019 to 23.07.2019. After recovering from the said injuries, he contacted his counsel in October 2019 and was informed that the suit had been decreed on 08.05.2018. After obtaining the certified copy of the judgment, the appeal was filed. He stated that on account of the accident, he could not contact his counsel and the delay that occurred in filing the appeal was neither intentional nor wilful. He submitted that passing of the judgment by the learned trial Court was not within his knowledge, therefore, the delay in filing the appeal may be condoned.

22. In cross-examination, he stated that the accident occurred on 27.06.2018. He stated that he earlier went to ESI Hospital at

Parwanoo and thereafter went to MMU Hospital at Kumarhatti. He admitted that the initial receipts were not appended with the record. Self-stated that the entire record had been appended in the MACT proceedings filed by him. As per AW-1, he remained in the hospital at Solan on 27.06.2018 for about 8 days and also stated that he remained admitted in the MMU Hospital for 18 days. He admitted that he was discharged from the MMU Hospital on 23.07.2018. He admitted that at Kasauli, an execution petition was pending. He stated that he does not remember whether on 19.02.2019 he had received summons from the said Court and further stated that he does not know that on 19.02.2019 he was proceeded against ex-parte by the Civil Court at Kasauli. He admitted that for setting aside the ex-parte order, he filed an appropriate application before the executing Court. He maintained that he was not aware of the passing of the judgment and decree by the learned trial Court.

23. In order to rebut the case of the present appellant, the plaintiff/respondent filed his affidavit, Ext.RW-1/A, stating that in the application, no plausible explanation has been given for the condonation of delay. He stated that the present respondent had filed the execution petition before the learned trial Court and the present appellant had received the summons on 19.02.2019. He stated that after receiving the summons, the appellant appeared before the executing Court on different dates after 10.03.2019. As per this

witness, the defendant/appellant concealed material facts from the learned Court, therefore, the application deserved to be rejected. The appellant could not extract anything favourable in the cross-examination of RW-1.

24. The record shows that the learned trial Court passed the judgment and decree on 08.05.2018. As per the version of the present appellant, the accident occurred on 27.06.2018. The present appellant instituted a claim petition under Section 166 of the Motor Vehicles Act on 18.09.2018. The claim petition was filed after the passing of the judgment and decree by the learned trial Court on 08.05.2018. It has been rightly contended by learned counsel for the respondent that once the present appellant was conscious and vigilant in exercising his legal rights by filing a petition under Section 166 of the Motor Vehicles Act on 18.09.2018, there was no justification for the appellant not to have filed the appeal against the judgment and decree passed by the learned trial Court within limitation.

25. The contention of the respondent is fortified by the fact that though it was averred in the application under Section 5 of the Limitation Act that the applicant came to know about the passing of the judgment only in the month of October 2019, but this stand is falsified by the application, Ext.RW-1/B, placed on record by the respondent. It is apparent on the face of record that the appellant was duly served in

the execution petition filed by the respondent/plaintiff for execution of the decree dated 08.05.2018.

26. It has also come on record that the present appellant was duly served in the execution proceedings and was proceeded against ex-parte on 19.02.2019 due to non-appearance. In order to set aside the said ex-parte order, he filed an application on 10.03.2019 before the learned Senior Civil Judge, Solan. The said application is duly signed by the present appellant, and the supporting affidavit was also sworn by him. A perusal of this application reveals that the appellant was well aware of the pendency of the execution petition filed for the enforcement of the decree passed by the learned trial Court on 08.05.2018.

27. Even if, it is presumed hypothetically that the present appellant was not aware of passing of the judgment on 08.05.2018, though the same was passed in the presence of learned counsel for the appellant, the document Ext.RW-1/B establishes that the appellant was duly served in the execution petition and was proceeded against ex-parte on 19.02.2019. Consequently, in the month of February 2019, the appellant had full knowledge of the passing of the decree by the learned trial Court. Once the appellant had received the summons in the execution petition and filed an application for setting aside the ex-parte order, the contents of the application under Section 5 stand completely falsified. It has not been explained what steps were taken

by the appellant from February 2019 till the filing of appeal under Section 96 of CPC read with application under Section 5 of the Limitation Act. It has also come on record that the judgment dated 08.05.2018 was pronounced in the presence of learned counsel for the appellant and thereafter to avail his legal remedy arising from the accident, he approached the learned MACT by instituting a petition on 18.09.2018. Therefore, this Court is not persuaded by the averments of the appellant that he was prevented by sufficient cause from filing the appeal before the learned District Judge.

28. This Court is in agreement with learned counsel for the respondent that the conduct of the appellant is not aboveboard, as after passing of the impugned order by the learned District Judge on 06.06.2023, he preferred the present regular second appeal only on 23.05.2026, after elapse of nearly three years though that delay was condoned after respondent consented for allowing of the said application subject to payment of cost of Rs.10,000/-

29. Generally, the Courts have adopted a very liberal approach in construing the phrase 'sufficient cause' used in Section 5 of the Limitation Act, in order to condone delay to enable the Courts to do substantial justice and to apply the law in a meaningful manner that sub-serves the ends of justice. Notwithstanding the above, no matter how liberal an approach is adopted in condoning delay, the existence of sufficient cause for not filing the appeal in time is a condition precedent for exercising the discretionary

power to condone the delay. The phrases 'liberal approach', 'justice-oriented approach', and cause for the advancement of substantial justice' cannot be employed to defeat the law of limitation so as to allow stale matters or, as a matter of fact, dead matters to be revived and reopened by taking aid of Section 5 of the Limitation Act. It must always be borne in mind, while construing sufficient cause in deciding applications under Section 5 of the Limitation Act, that on the expiry of the period of limitation prescribed for filing an appeal, a substantive right accrues in favour of the decree-holder, and this right ought not to be lightly disturbed.

30. The Hon'ble Apex Court has repeatedly held that even after sufficient cause has been shown by a party for not filing an appeal within time, the said party is not entitled to the condonation of delay as a matter of right, as excusing the delay is within the discretionary jurisdiction vested in the court. The Court, despite the establishment of sufficient cause, may for various reasons refuse to condone the delay, depending upon the bona fides of the party. The liberal approach in considering the sufficiency of cause for delay should not be allowed to override the substantive law of limitation. The concept of a 'liberal approach' cannot be employed to jettison the substantial law of limitation. It is a well-settled principle of law that though limitation may harshly affect a particular party, it has to be applied with all its rigour when the statute so prescribes.

31. The court has no power to extend the period of limitation on equitable grounds. Where a case has been presented in the court beyond

limitation, the applicant has to explain to the court what the sufficient cause was which means an adequate and enough reason that prevented him from approaching the court within the period of limitation. No court would be justified in condoning such an inordinate delay by imposing any condition whatsoever.

32. In this regard, the Hon'ble Apex Court in ***Pathapati Subba Reddy (Died) By L.Rs. and others v. The Special Deputy Collector (LA), Special Leave Petition (Civil) No. 31248 of 2018***, has observed as follows:

“12. In view of the above provision, the appeal which is preferred after the expiry of the limitation is liable to be dismissed. The use of the word ‘shall’ in the aforesaid provision connotes that the dismissal is mandatory subject to the exceptions. [Section 3](#) of the Act is peremptory and had to be given effect to even though no objection regarding limitation is taken by the other side or referred to in the pleadings. In other words, it casts an obligation upon the court to dismiss an appeal which is presented beyond limitation. This is the general law of limitation. The exceptions are carved out under [Sections 4 to 24 \(inclusive\)](#) of the Limitation Act but we are concerned only with the exception contained in [Section 5](#) which empowers the courts to admit an appeal even if it is preferred after the prescribed period provided the proposed appellant gives ‘sufficient cause’ for not preferring the appeal within the period prescribed. In other words, the courts are conferred with discretionary powers to admit an appeal even after the expiry of the prescribed period provided the proposed appellant is able to establish ‘sufficient cause’ for not filing it within time. The said power to condone the delay or to admit the appeal preferred after the expiry of time is discretionary in nature and may not be exercised even if sufficient cause is shown based upon host of other factors such as negligence, failure to exercise due diligence etc.

13. *It is very elementary and well understood that courts should not adopt an injustice-oriented approach in dealing with the applications for condonation of the delay in filing appeals and rather follow a pragmatic line to advance substantial justice.*

14 to 20 xx xx xx xx

21. *In [Lanka Venkateswarlu vs. State of Andhra Pradesh & Ors.6](#), where the High Court, despite unsatisfactory explanation for the delay of 3703 days, had allowed the applications for condonation of delay, this Court held that the High Court failed to exercise its discretion in a reasonable and objective manner. High Court should have exercised the discretion in a systematic and an informed manner. The liberal approach in considering sufficiency of cause for delay should not be allowed to override substantial law of limitation. The Court observed that the concepts such as ‘liberal approach’, ‘justice-oriented approach’ and ‘substantial justice’ cannot be employed to jettison the substantial law of limitation.*

22. xx xx xx

23. *In [Basawaraj and Anr. vs. Special Land Acquisition Officer 8](#), this Court held that the discretion to condone the delay has to be exercised judiciously based upon the facts and circumstances of each case. The expression ‘sufficient cause’ as occurring in [Section 5](#) of the Limitation Act cannot be liberally interpreted if negligence, inaction or lack of bona fide is writ large. It was also observed that even though limitation may harshly affect rights of the parties but it has to be applied with all its rigour as prescribed under the statute as the courts have no choice but to apply the law as it stands and they have no power to condone the delay on equitable grounds.*

24. *It would be beneficial to quote paragraph 12 of the aforesaid decision which clinches the issue of the manner in which equilibrium has to be maintained between adopting liberal approach and in implementing the statute as it stands, Paragraph 12 reads as under:*

“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.”

33. In the present case, the explanation assigned in the application fails to make out a case for condonation of delay. The defendant has failed to establish sufficient grounds. The learned first appellate Court, after appreciating the oral as well as documentary evidence, rightly dismissed the application. There was an inordinate delay in filing the appeal under Section 96 of the CPC and in the absence of plausible grounds, no relief can be granted to the appellant.

34. Though an attempt was made to project that the delay occurred on account of the fault of the learned counsel representing the appellant before the Court below. Mr. Parikshit Sharma, learned counsel for the respondent, rightly contended that a litigant cannot be permitted to make a lame excuse or shift the entire blame on the

counsel, especially when nothing has been placed on record to show what steps or action were taken against the advocate concerned.

35. Learned counsel for the respondent has placed reliance on the judgment of the Hon'ble Supreme Court in ***Rajneesh Kumar and another vs. Ved Prakash, SLP(Civil) Nos.935-936 of 2021***, wherein it has been held that a tendency on the part of litigants to blame their advocates for negligence in attending proceedings cannot be readily countenanced. Even assuming that the counsel was negligent, this by itself cannot constitute an automatic ground to condone an inordinate delay, as the litigant owes a duty to remain vigilant of his own rights and about the judicial proceedings initiated at his instance. A litigant cannot throw the entire blame onto the advocate and disown him at convenience to seek relief.

36. It is well settled that an advocate is the agent of the party, and his acts and statements made within the limits of authority are the acts and statements of the principal. While the Court may, in exceptional circumstances and in the interest of justice, relieve an innocent litigant of the consequences of an advocate's conduct, there is no absolute rule that a party can disown his advocate at any point to claim condonation of delay. Recognizing such absolute immunity would render the judicial process unworkable.

37. Similarly, the Hon'ble Apex Court in ***Sanjay Singh and another vs. Central Himalayan Land Development Company***,

(2019) 12 SCC 218, wherein parameters for condonation of delay have been laid down in following manner:

“15. But, what is more striking is that the delay to the tune of 721 days was condoned by the High Court when there was no satisfactory explanation. In CIVIL APPEAL NO. 1928 OF 2019 (@ SLP(C) NO.24690 OF 2018) SANJAY SINGH AND ANR. VS. CENTRAL HIMALAYAN LAND DEVELOPMENT CO. LTD. our view, there was gross negligence on part of the respondent and the explanation offered in support of the prayer for condonation does not appear to be correct. This is evident from the fact that no effective steps were taken to pursue the complaint which was lodged against the then advocate. In the petition for special leave, it was asserted that the complaint against the Advocate was not being proceeded with and the respondent had remained absent on the relevant date. Said assertion was not answered satisfactorily in the affidavit in reply filed in this Court. Taking totality of the circumstances, in our view the delay ought not to have been condoned by the High Court. We, therefore, accept the submission of the appellants and set aside the order condoning delay. Consequently, the First Appeal also stands dismissed.”

38. No other point urged by the learned counsel for the parties.

39. The appellant has completely failed to demonstrate sufficient cause for the condonation of delay and this Court finds no infirmity or illegality in the impugned order passed by the learned District Judge, Solan. The appellant was duly served in the execution petition and after he was proceeded ex parte, he filed the application for setting aside the same. The averment in the application that he

came to know about the passing of the judgment in the month of October 2019 is incorrect. There is no explanation that since February 2019 till October 2019 why the appeal under Section 96 of CPC was not filed. Accordingly, the substantial question of law is answered accordingly.

40. Consequently, in view of the observation as made hereinabove, this court does not find any illegality, perversity or jurisdictional error in the impugned order. Therefore, the present appeal, being devoid of any merit, deserves to be dismissed. Ordered accordingly. Pending application(s), if any, shall also stand disposed of.

(Romesh Verma)
Judge

29th September, 2026
(vt)