



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

17 SECOND APPEAL NO. 272 OF 2025

VITTHAL LAXMAN SABLE

VERSUS

CHANDRAKALABAI UTTAMRAO SURYAWANSHI AND ORS

...

Mr. Mehul Vikas Navandar, Advocate for Appellant.

Mr. N. D. Raje, AGP for Respondent Nos.2 and 3-State.

Mr. D. A. Mane h/f. Mr. Prashant Hanumant Sukale, Advocate for Respondent No.1.

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CORAM : SHAILESH P. BRAHME, J.

DATE : 24<sup>th</sup> SEPTEMBER, 2025

P.C.:-

1. Heard both the sides.
2. This Court has already framed substantial questions of law vide order dated 20.06.2025, which are as follows:-

*“(i) Whether the Lower Appellate Court is justified in refusing to condone delay of 44 months and 20 days ?*

*“(ii) Whether there was sufficient reasons for condoning delay and / or whether there are malafides attributable to the Appellant in preferring appeal and this aspect of the matter was rightly considered by the Lower Appellate Court?”*

3. With the consent of both the parties, the second appeal is taken up for final disposal. It is directed against judgment and decree dated 03.10.2024 passed in Civil M.A. No.21 of 2019, whereby the Lower Appellate Court refused to condone the delay of 44 months and

28 days in preferring an appeal under Section 96 of Code of Civil Procedure, 1908 (CPC).

4. The Appellant is Original Defendant No.1, who was being sued by Respondent No.1-Chandrakalabai for declaration and perpetual injunction in R.C.S. No.341 of 2010. The Appellant filed a counterclaim for specific performance of contract on the basis of an agreement to sell. Trial Court decreed the suit partly vide judgment and decree dated 17.06.2015, granting relief of injunction and dismissing counterclaim.

5. Being aggrieved, appeal under Section 96 was preferred belatedly along with Civil M.A. No.21 of 2019 soliciting condonation of delay of 44 months and 28 days. The Appellant examined himself in support of the application and produced a medical certificate dated 27.09.2023. The Lower Appellate Court by a reasoned order rejected the application.

6. Learned Advocate for the Appellant submits that the impugned judgment and decree is perverse because no opportunity was given in the Trial Court to cross-examine the witnesses and to put forth case before the Trial Court which is perpetuated. It is submitted that due to the disability, as the Appellant had undergone a major surgery, he was unable to remain present. It is further submitted that

Appellant is rustic villager, having no knowledge of the legal consequences and concept of limitation. His precarious economical condition was also pleaded to be a ground. It is further submitted that delay was not intentional and substantive rights of the Appellant are at stake. Hence, the delay should have been condoned.

7. Per contra, learned Advocate for Respondent opposes the submission by placing on record a photocopy of cross-examination of the Appellant and a certified copy of order dated 22.06.2022 delivered in Money Lander Appeal No.10 of 2022. It is submitted that the Appellant has assigned false and unconvincing reasons to seek condonation of delay. It is further submitted that no cogent evidence is placed on record to corroborate any ailment or surgery. The grounds are inconsistent. It is further submitted that the Lower Appellate Court rightly held that the medical certificate is afterthought. It is further submitted that the certified copy of the order passed in Appeal No.10 of 2022 indicates that the Appellate could prosecute collateral proceeding, but he was showing medical reasons for extension of limitation, which is dishonest attempt.

8. I have considered rival submissions of the parties. Trial Court pronounced judgment on 17.06.2015. Application for condonation of delay was preferred on 22.04.2019 and the delay of 44 months and 28 days is sought to be condoned. The Appellant

examined himself and his cross-examination is reflected in the impugned order.

9. Appellant had come up with the case that he had undergone major operation and could not appear before the Court. The application for condonation of delay lacks material particulars regarding the date of operation, hospitalization and period of disability. It is rightly pointed out by learned Advocate for the Respondent that medical certificate dated 27.09.2023 shows ailment of paralysis and not the surgery which is inconsistent.

10. Except medical certificate dated 27.09.2023, no other material was placed on record to show any physical disability. Application for delay of condonation was filed on 22.04.2019. The medical certificate was not accompanying the application and it was filed subsequently. Lower Appellate Court has rightly appreciated that medical certificate got prepared to cover up the reasons mentioned in the application. The medical certificate *ex-facie* shows that there was restriction on the mobility from March 2015 to 2020. If the ailment was serious, Appellant would have produced more convincing material on record in support of that. The reasons of his physical inability are absolutely not convincing rather it appears to be afterthought.

11. Further grounds stated in the application regarding lack of

knowledge of limitation and poor financial condition. These are again vague and not corroborated by any evidence. It is pointed out that the Appellant is interested in preferring appeal only against decree of injunction. In the present second appeal, Court fee of Rs.25 was paid. If that is the only Court fees to be paid, then inability to pay Court fees due to poor financial condition is *ex-facie* false. It is not made clear as to whether the Appellant does not have any support from any member of the family or friend.

**12.** A certified copy of order dated 22.06.2022, which is tendered across bar shows that the parties were litigating under Maharashtra Money Lending (Regulation) Act, 2014. An inquiry was conducted on 27.02.2017, in that regard and thereafter, order was passed by Deputy Registrar on 21.06.2018 and appeal was filed on 24.05.2021 before Divisional Joint Registrar, which was dismissed.

**13.** Learned Advocate for Respondent No.1 has rightly contended that Appellant could prosecute the collateral proceedings on one hand and on other hand, he is showing his physical disability. There are apparent malafides on the part of the Appellant. The delay is huge one, which is not properly explained. Due to the conduct of the Appellant, I am not inclined to adopt any liberal approach.

**14.** I do not find any illegality or perversity in the impugned

judgment and decree passed by Lower Appellate Court.

- (i). The first substantial question of law needs to be answered in the affirmative.
- (ii). The second substantial question of law is answered in the negative for first part and in affirmative for lateral part.
- (iii). The second appeal is accordingly dismissed.

**(SHAILESH P. BRAHME, J.)**

*Tauseef*