



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.245 OF 2025
WITH CIVIL APPLICATION NO. 1832 OF 2025
IN SA/245/2025
WITH SECOND APPEAL NO. 246 OF 2025
WITH CIVIL APPLICATION NO. 1816 OF 2025
IN SA/246/2025

Bhartidevi Shivraj Baldava,
Age: 71 yrs, Occu.: Household,
R/o. Diwan Devdi, Aurangabad,
Through her G.P.A.

Jagdish Balkishan Lohiya.
Age: 53 yrs, Occu.: Pvt. Service,
R/o. Gulmandi, Aurangabad.

... **APPELLANT**
(Ori. Defendant)

VERSUS

Aurangabad Textile & Apparel Parks Ltd.,
Having Registered Office At 63,
T. B. Kadam Marg, Mumbai-400 003
Factory at Kotwalpura, Mill Corner,
Aurangabad.

Through its authorized Signatory,
Jaikrishna Goverdhandas Grover,
Age: 75 years, Occu.: Service,
C/o. As above.

... **RESPONDENT**
(Ori. Plaintiff)

...
Advocate for Appellants/Applicants : Mr. Shrigopal G. Dodya.
Advocate for Respondent : Mr. Muthiyan Namit Sunil.
...

CORAM : SHAILESH P. BRAHME, J.
DATE : 20.09.2025

ORAL JUDGMENT :-

1. Heard both sides.

2. Both appeals can be decided by common judgment. It was already indicated in previous order dated 07.07.2025 that appeals would be decided finally at the admission stage. The substantial questions of law were also formulated. Accordingly, both learned counsels addressed on the substantial questions of law.

3. Facts in both second appeals are identical. The length of delay is 03 months and 17 days in preferring appeals under Section 96 of the Civil Procedure Code before Lower Appellate Court which is referred to be condoned by distinct orders passed on 13.07.2023. Being aggrieved, second appeals are preferred.

4. In Second Appeal No.245 of 2025, appellant is original defendant who suffered decree of injunction in Regular Civil Suit No.590 of 2016 on 24.03.2023. Being aggrieved, appeal under Section 96 was preferred belatedly.

5. In Second Appeal 246 of 2025, appellant is original plaintiff who had filed Regular Civil Suit No.465 of 2017 for injunction. It was dismissed vide order dated 24.03.2023. Being aggrieved, appeal was filed belatedly.

6. Learned counsel for the appellant submits that delay of 03 months and 17 days is specifically explained in the application contending that appellant is aged and ailing. She was unable to file appeals within limitation and engaged an attorney who was also busy with his private job and unable to file appeals in time. It is submitted that the delay is marginal and the Appellate Court committed error of jurisdiction in rejecting the same. It is submitted that reply given to the application is not specific. The learned Judge erred in holding that appellant was very casual in filing application for condonation of delay. It is submitted that pedantic approach is adopted by Lower Appellate Court. If the delay is condoned, no prejudice would be caused to the respondent.

7. Per contra, learned counsel Mr. Muthiyan submits that application for condonation of delay lacks material particulars. The attorney was busy in some private job cannot be a ground to condone delay. It is submitted that application is not supported by any medical papers or tangible evidence to disclose the disability. It is further submitted that the respondent is also being represented by a person who is older than the applicant and as such age of 70 cannot be a ground in itself to condone the delay. It is vehemently submitted that

there is gross negligence on the part of the appellant. Persistently, appellant has indulged into lapses because second appeals were also filed belatedly. It is pointed out that she could execute power of attorney within limitation of appeals. It is submitted that hardship is caused to the respondent.

8. I have considered rival submissions of the parties. The length of delay, the grounds pressed into service for condonation of delay are common in both the appeals. The reasons assigned for condonation of delay age and ailment of the appellant. It reveals from record that she engaged attorney by executing a document on 08.05.2023. She approached the Appellate Forum with application for condonation of delay on 10.07.2023. There is no dispute that the date of judgment mentioned in paragraph No.5 of the impugned order is incorrectly mentioned to be 24.03.2024 instead of 24.03.2023.

9. The application of condonation of delay supported by affidavit. No medical papers or oral evidence is adduced by the applicant. The day-to-day explanation is not contemplated. The reasons stated in paragraph No.3 of the applications cannot be said to be very specific. The submissions of the learned counsel for the respondent has some force because the

reason that attorney was engaged in his private job, is not appealing.

10. But in my view, in such a matter, the crucial question would be as to whether it is pragmatic to reject the application for condonation of delay of 03 months and 17 days. From the application, reply and the reasons given in the impugned orders no malafides attributable to the applicant are reflected. No oblique motive has been pointed out for preferring the appeals belatedly. A useful reference can be made to judgment of Supreme Court in the matter of ***Ram Nath Sao @ Ram Nath Sahu and others Vs. Gobardhan Sao And Others ; 2002 AIR SCW 978.***

11. The appellant before this Court has suffered decree passed by the Trial Court. Appeal under Section 96 of the CPC is a substantive statutory right. These appeals provided by statute are on facts and law as well. It is a fit case in which the learned Appellate Judge should have adopted a liberal approach because it is only delay of 03 months and 17 days. I am of the considered view that a pedantic approach has been adopted by the learned Judge in rejecting application which needs to be rectified.

12. The submission of the learned counsel for the respondent that the authorized person of the respondent is older and ailing than appellant/applicant cannot be a ground to conceive that the reasons assigned by the appellant are false. The physical fitness of the person and the age cannot always go hand in hand. That is a subjective. Appellant was required to engage an attorney is indicative of the fact that though she was of 70 years of age she is unable to look after some activity.

13. Learned counsel for the respondent has relied on the judgment dated 15.03.2024 passed by Co-ordinate Bench in Second Appeal No.73 of 2018. My attention is adverted to the observations made in paragraph No.10 because in that matter also delay was sought to be condoned on ailment without placing any medical papers on record. The observations in paragraph No.10 cannot be disputed. It is trite law that the condonation of delay depends upon facts and circumstances of a case. In that case, a delay of 04 years and 11 months 08 days was sought to be condoned. As against that, in a case at hand, we are considering delay of 03 months 17 days which is a distinguishable feature. It is distinguishable on various facts and therefore, I am of the considered view the course adopted

by learned Co-ordinate Bench cannot be adopted in the present case.

14. My attention is also adverted to the principles reiterated in paragraph No.10 of the order that “the laws of limitation though harsh are required to be applied with full rigour and cannot be brushed aside on the ground of interest of justice and it is not the duration of delay which is material but the explanation tendered for the delay. A few days delay may not be condoned in the absence of sufficient explanation whereas substantial delay may be condoned.” The principles cannot be disputed but as I have already observed that considering facts and circumstances in the present case, it would be very harsh to refuse to condone the delay of 03 months and 17 days.

15. For the foregoing reasons, I find that impugned orders passed in both the appeals are unsustainable. Both substantial questions of law need to be answered in negative. Both appeals succeed.

- (i) Second appeals are allowed.
- (ii) Impugned judgments and orders dated 01.08.2024 passed by Lower Appellate Court are quashed and set aside.

- (iii) The delay of 03 months and 17 days in preferring both the appeals stands condoned on cost of Rs.7,000/- in each case to be paid to respondent within a period of two (2) weeks from today which shall be the condition precedent.
- (iv) Appellant shall co-operate the Appellate Court in expeditious disposal of the appeals.
- (v) Both parties shall appear before the Appellate Court on 03.10.2025.
- (vi) Civil applications are disposed of accordingly.

(SHAILESH P. BRAHME, J.)

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vmk/-