



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

SECOND APPEAL NO. 414 OF 2024

Umakant Raoji Shinde
Age 50 years Occ. Agriculture,
R/o Kasarkheda, Ta. Nanded,
District Nanded.

.... APPELLANT
(Orig. Defendant)

VERSUS

Sunil Annasaheb Suryawanshi
Age 58 years Occ. Business,
R/o Hanumannagar, Near Tilak Nagar,
Ta. Nanded, District Nanded.

.... RESPONDENT

...

Mr. S. S. Panale, Advocate for Appellant
Mr. S. V. Natu, Advocate for Respondent Sole

...

**WITH
CIVIL APPLICATION NO. 3084 OF 2024
IN SA/414/2024**

.....

CORAM : ROHIT W. JOSHI, J.

DATED : 03RD APRIL, 2025

JUDGMENT :-

. The appellant in the present appeal has suffered a decree for specific performance of contract dated 27.05.2021 passed by the learned Civil Judge Senior Division, Nanded in Special Civil Suit No.61 of 2016.

2. The appellant filed appeal challenging the said decree for specific performance of contract. However, there was a delay of around 371 days in filing of the appeal, as a consequence of which an application for condonation of delay was required to be filed. This application which was registered as Civil Miscellaneous Application No.40 of 2023 came to be rejected by the learned First Appellate Court vide judgment and order dated 17.04.2023.

3. The present Second Appeal is filed challenging the said order. Vide order dated 17.03.2025, following substantial question of law was framed:

i. Whether the learned First Appellate Court has adopted hyper technical approach in rejecting application for condonation of delay for filing First Appeal?

4. The learned Advocate for the appellant contends that it is the specific case of the appellant that he had instructed his Advocate to file appeal in order to challenge the decree passed by the learned Trial Court, however, the appeal was not filed. This explanation has not found favour with the learned First Appellate Court. The learned Counsel for the appellant contends that the learned Courts should have appreciated that

the decree by the learned Trial Court is dated 27.05.2021 when Covid-19 Pandemic lockdown was at its peak. He states that due to Covid-19 restrictions, there was a communication gap between the appellant and the Advocate which learned First Appellate Court ought to have considered favourably. The Hon'ble Supreme Court had extended the limitation for filing of proceedings up to 30th June, 2022 in view of the Covid-19 pandemic.

5. The respondent/original plaintiff has filed reply in the matter, seriously disputing the contentions raised by the appellants explaining the delay. It is pointed out that the respondent had also filed a substantive appeal being Regular Civil Appeal No.45 of 2021. The learned First Appellate Court had issued notice in the said appeal which was duly served on the appellants and the appellants have entered appearance in the said appeal on 21.09.2021. In that view of the matter, it is apparent that the appellants should have at least, on being served with the notice in the appeal filed by the respondent, been diligent and made inquiries about the appeal that they proposed to file. However, as stated above, the appellants have filed the appeal as late as on 10.03.2023.

6. As stated above, the Hon'ble Supreme Court had extended the limitation for filing appeals up to 30.06.2022. The delay up to that date cannot therefore be counted. It appears that the application for condonation of delay is dated 08.03.2023 and it appears that it was filed on 10.03.2023. In that sense, there is a delay of 9 months. The explanation that due to Covid-19 lockdown, there was a communication gap between the appellants and their Advocate appears to be plausible. However, even thereafter there is a delay of 8 months and 9 days. Normally, the discretion exercised by the learned First Appellate Court would not have been interfered. However, in the present set of facts, delay of 9 months should be construed liberally, having regard to the nature of decree passed against the appellant.

7. A substantive appeal is also preferred by the respondent in which date of hearing of appeal under Order XLI Rule XII is not yet fixed. Order XLI Rule XXII of the Code of Civil Procedure provides that a respondent in appeal who has not filed a substantive appeal can file a cross-objection challenging the decree passed against him within a period of one month from the date on which hearing of appeal fixed

under Order XLI Rule XII. It is open for the appellants to file a cross-objection, since the date of hearing of appeal under Order XLI Rule XII is not yet fixed.

8. In that view of the matter, in my considered opinion that ends of justice will be met by allowing the appellant to contest the appeal on merits by condoning the delay. However, it is also necessary to grant adequate compensation to the respondent in whose favour a decree for Specific Performance is passed. The delay is condoned subject to cost of Rs. 10,000/- to be deposited by the appellant before the learned First Appellate Court on or before 28.04.2025.

9. In view of the fact that the decree passed by the learned Trial Court is of the year 2021 and now the appeal will be registered in the year 2025 due to the delay in filing appeal, the learned First Appellate Court is requested to decide the appeal within a period of one year from the date of registration of the appeal.

10. On joint motion made by the parties, it is directed that the parties shall appear before the learned First Appellate Court on 28.04.2025, for which, further notice will not be

issued.

11. The Second Appeal stands disposed of.
12. Pending Civil Application, if any, stands disposed of.

(ROHIT W. JOSHI, J.)

Rushikesh/2025