



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CIVIL APPLICATION NO.7439 OF 2024
IN
CIVIL REVISION APPLICATION (ST.) NO.11660 OF 2024**

Gyanba P. Devaba Jare (Dhangar),
Since Died through its L.Rs.

- 1/1. Mahadev S/o Gyanba Jare (Dhangar)
Age 57 years, Occ. Agri.
R/o Aadgaon (Mutkule), Near Aauli Mandir,
Tq. & Dist. Hingoli.
- 1/2. Datta S/o Gyanba Jare (Dhangar)
Age 51 years, Occ. Agri.
R/o Kalburga, Near Chandrakant Kaste House,
Tq. & Dist. Hingoli.
- 1/3. Madhukar S/o Gyanba Jare (Dhangar)
Age 57 years, Occ. Agri. R/o Kalburga,
Near Zill Parishad Shcool, Tq. & Dist. Hingoli.
- 1/4. Chandrabhagabai W/o Laxman Tonchar (Dhangar)
Age 76 years, Occ. Agri.
R/o Kalburga, Near Chandrakant Kaste House,
Tq. & Dist. Hingoli.
- 1/5. Shashikala W/o Chintaman Kute (Dhangar)
Age 48 years, Occ. Agri. R/o Kanjara,
Jai Malhar Chowk, Tq. Mangrul Peer,
Dist. Washim.
2. Sarubai D/o Gyanba Jare (Dhangar),
Age 66 years, Occ. Household,
R/o Kalburga, Tq. & Dist. Hingoli. ..Applicants

Versus

1. Smt. Gangabai Shamrao Jare
Since Died through L.Rs.
Respondent no. 3 to 4
2. Vaijanath S/o Shamrao Jare (Died)
through LR.
- 2/1 Smt. Sumanbai Vaijnath Jare
Age: 56 Yrs, Occu. Household
R/o Ganganagar, Hingoli Tq. & Dist. Hingoli.
- 2/2 Subhendra S/o Vaijnath Jare
Age: 31 Yrs, Occu: Service
R/o Ganganagar, Hingoli

2/3 Smt. Shruti W/o Nagesh Kakade
Age: 41 Yrs., Occu: Service
R/o Ganganagar, Hingoli

3. Prabhakar S/o Shamrao Jare
Age: 47 Yrs., Occu: Service
R/o Near Pola Maroti Temple,
Tq. & Dist. Hingoli

4. Vishnu S/o Shamrao Jare
Age: 45 Yrs, Occu: Service
R/o Near Pola Maroti Temple,
Tq. & Dist. Hingoli

..Respondents

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Mr. S. S. Deshmukh, Advocate for Applicants.

Mr. D. M. Shinde, Advocate for Respondent Nos.2/2, 2/3 and 4.

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CORAM : S. G. CHAPALGAONKAR, J.
DATE : 18th FEBRUARY, 2025.

ORDER:-

1. By this application, applicants seek to condone delay of 561 days caused in filing present Civil Revision Application assailing order dated 07.07.2022 passed by the Civil Judge, Senior Division, Hingoli in application below Exhibit-58 in Regular Civil Suit No.191/2016.

2. The respondents herein instituted Regular Civil Suit No.191/2016 claiming relief of declaration of ownership, possession and mesne profit. The defendant-Gyanaba Devba Jare appeared in the suit and filed application under Order VII Rule 11 of the Code of Civil Procedure seeking rejection of plaint. However, Trial Court rejected application vide order dated 07.07.2022. The present Civil Revision Application is filed assailing said order alongwith application to condone the delay of 561 days.

3. Mr. Deshmukh, learned Advocate appearing for the applicants submits that Regular Civil Suit No.191/2016 is vexatious and abuse of process of law. According to him, rights of the parties have already been adjudicated and decided in Regular Civil Suit No.87/1973 and endorsed in Regular Civil Appeal No.101/1975. In spite of final adjudication of the rights of the parties in previous litigation, present suit is filed in respect of same property and asserting right, which is already foreclosed in previous litigation. He would submit that delay caused in filing Civil Revision Application is unintentional and applicants have not derived any benefit by making such delay. According to him, considering the merits of the case, the delay needs to be condoned.

4. Per contra, Mr. Shinde, learned Advocate appearing for the respondents vehemently opposes the prayer for delay condonation. He would submit that in adversarial litigation, if proceeding is filed beyond period of limitation, certain rights are accrued in favour of the parties. Section 3 of the Limitation Act foreclose action, which is barred by limitation, unless, sufficient cause is made out in terms of Section 5. By inviting attention of this Court to averments put forth in application by way of explanation to the delay, he submits that no case can be made out to condone the delay. According to him, merits of the matter cannot be gone into, when issue as to the sufficiency of cause for delay condonation is put up

before the Court. In support of his contentions he relies upon judgments of the Supreme Court of India in cases of ***H. Anjanappa and Ors. Vs. A. Prabhakar and Ors. (Civil Appeal Nos.1180-1181 of 2025 dated 29.01.2025)***, ***Pathapati Subba Reddy (Died) by L.Rs. & Ors. Vs. Special Deputy Collector (LA)¹***, and judgment of this Court in case of ***State of Maharashtra and Others Vs. Nawalkishore Parasramji Kabra (Second Appeal No.355 of 2009 dated 25.04.2024)***.

5. Upon careful consideration of the averments in the application it can be noted that first five paragraphs are devoted to the submissions on merits. In paragraph no.6 following averments are made:

“However, there is delay of 561 days in filing the present Civil Revision Application, which was caused due to lack of knowledge and advise, as such same is not deliberate and intentional. The applicants are having prima facie good case and balance of convenience also lies in favour of the applicant, therefore, the applicants prays that the delay caused in filing the revision application may kindly be condoned so as to achieve the ends of justice otherwise the applicants would be put to irreparable loss”

6. The issue before this Court is as to whether the averments in the paragraph no.6 can be considered as sufficient cause to condone the delay of 561 days in filing Civil Revision Application. In case of ***H. Anjanappa and Ors.*** (supra) Supreme Court observed that inaction, negligence, or lack of diligence on the part of the party seeking to condone delay would disentitle him to claim relief. In

¹ 2024 (5) Mh.L.J. 100.

the matter of ***Pathapati Subba Reddy (Died) by L.Rs. & Ors.*** (supra) after reviewing law laid down by Supreme Court of India in various judgments, including judgment in case of ***Basawaraj and Anr. vs. Special Land Acquisition Officer***² it was observed that expression ‘sufficient cause’ as occurring in Section 5 of the Limitation Act cannot be liberally interpreted if negligence, inaction or lack of bonafide is writ large. It was further 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. In paragraph no.26 following observations are made:

“26. On a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that:

(i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;

(ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;

(iii) The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally;

(iv) In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act;

(v) Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;

(vi) Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;

(vii) Merits of the case are not required to be considered in condoning the delay; and

(viii) Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision.”

7. In light of the aforesaid exposition of law, if the reason stated in the application are considered, which is summarized in one line that reads thus “the delay was caused due to lack of knowledge and advice”. Pertinently, applicants were represented and assisted by Advocate before Trial Court. Therefore, lack of knowledge or advise cannot be accepted as good ground to condone inordinate delay of 561 days. As rightly contended by Mr. Shinde, learned advocate appearing for the respondents, certain rights have now been created in favor of the respondents by statutory implication. Such rights cannot be disregarded by condoning the delay in the absence of sufficient cause. The aforesaid exposition of law also mandates that merits of the matter are not germane to decide application seeking condonation of delay. Therefore, unless

sufficient cause is made out by elaborating sufficient reasons that precluded applicant from approaching the Court within given time, delay cannot be condoned.

8. Another important aspect of the matter that needs to be noted is that the suit has been instituted in 2016, while the application for rejection of the plaint is filed in 2022. By this time, the proceedings in the suit advanced, and parties have tendered evidence on framed issues. In that view of the matter, although it is permissible to exercise powers under Order VII Rule 11 of the Code of Civil Procedure at any stage of proceeding, the applicant's lethargy has effectively resulted into abandonment of their rights. Needless to state that the Court's power to reject the plaint can be exercised at any stage. However, if a party is not diligent in assisting the Court in exercising such powers at the earliest opportunity, and judicial time of approximately six years has already been consumed, a decision of suit on merit on conclusion of trial would prejudice none. Hence, Civil Application stand rejected.

9. Consequently, Civil Revision Application disposed of.

(S. G. CHAPALGAONKAR)
JUDGE