



Sonam

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 265 OF 2025****GOKULDAS PANDHARINATH NAIK
AND ANR.****... Petitioners*****Versus*****RAVINDRA PANDHARINATH NAIK
SINCE DECEASED THR. LRS.****...Respondents*****Mr. Amay Phadte, Advocate for the Petitioners.*****CORAM : VALMIKI MENEZES, J.****DATED : 10TH JULY, 2025.****ORAL ORDER:**

1. Registry to waive objections and register the matter.
2. This is a Petition challenging order dated 21.01.2025 passed under Section 5 of the Limitation Act condoning delay of about 12 years in filing a First Appeal against the Judgment and Decree dated 29.01.2008. The Judgment and Decree dated 29.01.2008 was challenged before the District Court in First Appeal on 30.05.2022, citing ignorance of the passing of the Ex-parte Decree in favour of the Plaintiffs/original Petitioners.
3. The background facts which are relevant to deciding this petition are as follows:

(a) The original Plaintiffs/Petitioners filed Special Civil Suit No. 4/2006/A before the Civil Court seeking a Decree of declaration that the Plaintiffs were exclusive owners of the suit property and the name of Defendant No. 1 found in the Deed of Sale dated 27.04.1993 and Deed of Release and Confirmation dated 24.06.1993 be cancelled. As a consequence of the cancellation of these documents, the Plaintiffs sought rectification in the Revenue Records of the suit property in survey Nos. 460/1, 460/2, 460/3, 460/4, 460/5, 460/6, 460/7 and 460/8 of village Shiroda.

Defendant No.1 is the brother of the Plaintiff in the suit.

(b) After service of summons on the Defendant Nos. 1 and 2, of which Defendant No. 2 is the wife of Defendant No.1, the Defendants failed to file Written Statement. On 03.06.2006, and the suit was proceeded Ex-parte against the Defendants. Defendant No.1 expired on 24.04.2006, which was the returnable date of the summons.

(c) The suit was ultimately decreed on 29.01.2008 and pursuant to the Decree, the mutation entry in Survey Records of the suit properties consisting of eight Survey Numbers in the name of Defendant No.1 stood deleted.

4. It is a matter of record that Respondent Nos. 1(b) and 1(c) are Legal Representatives/children of the deceased Defendant No. 1, who were never brought on record of the Civil Court, even though they have inherited a direct interest in the suit property. The application for condonation of delay filed by the children of deceased Defendant No.1, pleads lack of knowledge of the pendency of the suit and passing of the Decree and knowledge and knowledge its imputed when children of deceased Defendant No. 1 visited the suit properties in July 2019 and came to know of the sale of the suit properties by the Plaintiffs through one Sangeeta Naik. The said children then made an inquiry and sought certified copies of the record of the suit in the year 2022, and then filed an Appeal along with an application for condonation of delay citing the aforesaid reasons.

5. The Appellate Court has exercised its discretion under Section 5 of the Limitation Act in favour of the Respondents, holding that the reasons cited for the delay in filing the Appeal were sufficient to condone such delay and register the Appeal. Whilst passing this order, the Appellate Court has also held that the Plaintiff/ Petitioner herein had full knowledge of the fact that his brother/Defendant No. 1 has expired on the returnable date of the summons and having such knowledge, did not brought his Legal Representatives on record i.e. his two

children Respondent No. 1(b) and 1(c) herein. The Appellate Court observed that the act of the Plaintiffs was fraudulent and the Decree was taken against the dead person, the Plaintiffs having full knowledge that he is taking a Decree from the Court in 2008 against the dead person having knowledge of the names of the Legal Representatives of the dead person.

6. The main contention of the learned Advocate for the Petitioner is that the Appellate Court ought not to have entered findings on the merits of the case by observing or imputing any knowledge of the death of Defendant No. 1 or by suggesting that the Plaintiffs have committed fraud on the Court by obtaining the Decree against the dead person.

7. Considering that the findings of the Appellate Court of the knowledge of the Plaintiffs of the demise of his brother on the returnable date of summons is not denied, and the findings are, only prima facie findings by the Appellate Court, on looking at the overall facts of the case, there is no reason to interfere with the discretion exercised by the Appellate Court under Section 5 of the Limitation Act. In *N. Balakrishnan v. M. Krishnamurthy*, reported in (1998) 7 SCC 123, the Supreme Court has held that a Superior Court shall ordinarily refrain from interfering in the positive exercise of discretion by the Trial Court

under Section 5 of the Limitation Act. The relevant paragraph is quoted below:

“9. It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.”

8. For the reasons stated above, no case has been made out for interference in the supervisory jurisdiction under Article 227 of the Constitution of India.

9. The Writ Petition stands dismissed in limine.

VALMIKI MENEZES, J.