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IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 34 OF 2025**

LIFE IN THE WORD JOYCE MEYER
MINSTRIES REP. BY POA HANUMAN
NAYAK

... Petitioner*Versus*

PRISCILLA LOBO AND 7 ORS.

...Respondents

Mr. Kishan Padgaonkar, Advocate for the Petitioner.

CORAM : VALMIKI MENEZES, J.
DATED : 12TH MARCH, 2025.

ORDER:

1. This petition impugns order dated 18.04.2024, condoning delay under Section 5 of the Limitation Act and an application to set aside the order dismissing the Respondent's/original Plaintiff's suit for default. The Civil Court has exercised discretion under Section 5 of the Limitation Act in favour of the Respondents. It is against an order exercising discretion in favour of the Plaintiffs that the Defendants have challenged the same in the suit.

2. According to the facts pleaded by the Plaintiffs in their application for condonation of delay and seeking restoration of the suit, the Applicant who is the Plaintiff No. 4 stated as under:

(a) That the suit was pursued by the Plaintiff No.1/brother of the Applicant on her behalf, who was in continuous touch with the Advocate who was appearing for them. Subsequently, Covid-19 Pandemic started and none of the parties appeared before the Courts in view of the various notifications, imposing restrictions on citizens from moving out in public.

Thereafter, somewhere in the year 2021, when the Courts commenced hearing of the suit, it was found from the record by Plaintiff No.4 that Plaintiff No.1 was issued a notice by their Advocate withdrawing his appearance which facts were not to the knowledge of the Applicant and claims that he never informed about the withdrawal of the appearance of the Advocate.

(b) Plaintiff No.4 further submits that it was only around 06.06.2021, when she checked records of the suit, after her brother informed that he was not pursuing the case, that it came to her knowledge that the suit came to be dismissed for default for non-prosecution of the

case. The application for condonation of delay came to be filed on 12.10.2022.

3. The Trial Court considered the facts stated in the application, so also the background facts including the basis on which the suit was filed by the Plaintiff and has exercised discretion in favour of the Plaintiff and restored the suit on the payment of costs of Rs.8000/- (Rupees Eight Thousand only) to Respondent No. 8.

4. The impugned order is challenged mainly on the ground that there is no explanation in the application for condonation of delay from 06.06.2022 which is the date on which Plaintiff No. 2 came to the knowledge of dismissal and filed the application for condonation of delay only on 12.10.2022.

5. Reliance has been placed on the following 2 Judgments of Supreme Court:

1. *Pathapati Subba Reddy & ors V/s Special Deputy Collector (LA)*, reported in *2024 SCC Online SC 513*.
2. *Basawraj and another V/s Special Land Acquisition Officer*, reported in *(2013) 14 Supreme Court Cases 81*.

6. These Judgments have been cited to contend that though the power under Section 5 is exercised by this Court, discretion is to be exercised based upon the facts stated in the application.

7. At the outset one must be point out that in the above Judgments, the Supreme Court has referred to the particular facts of those cases, where the delay in one of them was of over 6 years in filing the Appeal against the Award of Land Acquisition case; in that case, the High Court refused to exercise its discretion under Section 5 of the Limitation Act and dismissed their application for condonation of delay. In the second case also the High Court has refused to exercise discretion to condone the delay in the light of the fact that there was a large unexplained delay in the matter. It is in those set of facts that the Supreme Court has rendered the said Judgments and refused it interfere with an order refusing to exercise discretion. Those Judgments would not apply to the facts of the present case.

8. In the present case, it is the reverse situation, where the Trial Court exercised discretion under Section 5 of the Limitation Act and condoned the delay, accepting the reasons cited by the Applicant. The Supreme Court has, in several Judgments expressed that the jurisdiction under Article 227 of the Constitution of India ought not to, in such cases exercised

to interfere with an order where the discretion has been exercised in favour of the Applicant. ***In Mohammad Shafeeq V/s Mirza Mohammad Husain and ors.*** reported in (2002) 9 SCC 460, the Supreme Court has made the following observation:

“3. In our opinion, the High Court has taken too technical a view of the error committed by the appellant in pursuing the remedy available to him under the law. The appellant had been prosecuting his remedy diligently and there is nothing to doubt his bona fides. These aspects were taken into consideration by the learned Additional District Judge while condoning the delay in filing the revision. In our opinion, the High Court ought not to have interfered with the order of the Additional District Judge, condoning the delay in filing the revision, being an order passed in exercise of discretion vested in the learned Additional District Judge and for that reason, was not open to interference by the High Court in exercise of its supervisory jurisdiction under Article 227 of the Constitution.”

Further, in the Sarpanch, Lonand Grampanchayat V/s Ramgiri Gosavi and anr., reported in AIR 1968 SC 222, the Supreme Court, at paragraph No.6, has held as under:

“6.... It is not shown that in condoning the delay the Authority acted arbitrarily or capriciously or in excess of its jurisdiction or that it committed any error apparent on the face of the record. In the application under Section 20(2), some of the

employees claimed overtime wages for periods prior to January 1, 1961. The Authority declined to condone the delay in respect of claims for the period prior to January 1, 1961. On a careful consideration of the relevant materials, the Authority condoned the delay in respect of claims subsequent to January 1, 1961 only. The Court cannot interfere merely because it might take a different view of the facts and exercise the discretion differently. It is not shown that the impugned order led to grave miscarriage of justice. The High Court refused to interfere under Article 227. We think that this is not a fit case for interference by us under Article 136.”

9. In ***Pathapati Subba Reddy*** (supra), the Supreme Court referring to ***Basawraj*** (supra) on the harmonious consideration of Section 3 and 5 of the Limitation Act has held so:

“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;
(il) 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
(vii) 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.”*

10. The present case lies from the suit where the Plaintiff has challenged 3 Gift Deeds to which they claim they are not the parties, though they are co-owners of the property. The Petitioner is a subsequent owner of the suit property. The Gift Deed is purported to have been made by the co-owners of the

property with the exception of the Plaintiff in favour of brother of the Plaintiff. The suit is for declaration and there is a fair chance of the Plaintiff succeeding in the suit.

11. The Trial Court has considered these facts and has exercised discretion, which in my opinion, are exercised in the manner with the provisions of Section 5 of the Limitation Act. There is no inordinate delay on the part of Applicant while pursuing the suit and then filing an application for condonation of delay. It may be true that there is no detailed explanation given for filing the application from 06.06.2022 till the date of filing i.e. 12.10.2022. However, that by itself would not compel this Court to set aside a discretionary order, if the order was otherwise within the bounds of the discretionary powers under Section 5 of the Limitation Act.

12. The Trial Court has considered all the other attending facts, whether the delay was inordinate or whether there was delay due to negligence of the party. It has also awarded costs to compensate the Respondent for the delay.

13. The discretion exercised under the Trial Court is therefore within the power of Section 5 of the Limitation Act. the Order does not call for interferece with the discretion

exercised in favour of the Respondent. Consequently, the petition is rejected.

VALMIKI MENEZES, J.