



Meena

IN THE HIGH COURT OF BOMBAY AT GOA

**MISC. CIVIL APPLICATION NO. 77 OF 2025
IN
FIRST APPEAL NO.413 OF 2025 (F)**

Ramesh Ramchandra Pawar ... Applicant

Versus

Jaison Dias and 22 Ors. ... Respondents

Mr. P. Shirdodkar h/f. Ms. Annelise Fernandes and Mr. K.H. Naik, Advocates for the Applicants.

Mr. Aurobindo Gomes Pereira, Advocate for Respondent No.1.

Mr. B. Fatarpekar, Advocate for Respondent No.18.

CORAM: VALMIKI MENEZES, J.

DATED: 19th November, 2025

P.C.:

1. This is an application for condonation of 946 days delay in filing a First Appeal against the judgment and decree dated 30.06.2020, passed by the District Judge I, North Goa, Panaji, in Civil Suit No.51 of 2007. The application for condonation of delay has been filed by the Original Defendant No.1 in the suit. After notice was issued to the Respondent No.1, the Original Plaintiff in the suit, an affidavit in reply

came to be filed, to oppose the application. According to the affidavit in reply, the Respondent No.1 avers that the statements made in the application are factually false and the delay is wholly unexplained.

2. Heard Mr. P. Shirdodkar h/f. Ms. Annelise Fernandes and Mr. K.H. Naik, learned Advocates for the Applicants, Mr. Aurobindo Gomes Pereira, learned Advocate for Respondent No.1 and Mr. B. Fatarpekar, learned Advocate for Respondent No.18.

3. Learned Advocate for the Applicant, had taken me through the averments made in the application and the supporting documents. The main contention raised by the applicant to justify the delay of 946 days is that, the wife of the Applicant was suffering from breast cancer and was undergoing treatment in various hospitals, prior to the passing of the impugned decree and thereafter; it is the applicant's contention that he was unable to file the appeal during this period and had no knowledge of the passing of the decree, since the Advocate appearing for the applicant did not

inform him of the passing of the decree. The decree sets aside a Deed of Sale dated 07.06.2005 by which, according to the claim of the applicant the Original Defendant No.2 transferred the suit plot as attorney of the Original owners of the land to the applicant. The Trial Court has held that the Deed of Sale dated 07.06.2005, in favour of the Defendant No.1 /applicant herein, is null and void and as a consequence has directed cancellation of the Deed and demolition of the structure erected on the said plot as being illegal and without any license. An Execution application bearing No.73 of 2024 is pending before the Court of the Additional District Judge-I, Merces wherein certain directions had been issued in execution to the authorities for carrying out the demolition of the structure of defendant No.1/applicant, existing on the suit property.

4. Per contra, the learned Advocate for the Respondent No.1 has opposed the Application, contending that on 28.09.2022 the limitation period has expired, a valuable right has accrued in favour of the Respondent no.1 /Original

Plaintiff and such right would not be easily taken away unless there is sufficient cause shown on the application for condonation of delay and the delay has been properly justified. Reliance is placed on the Judgments of the Supreme Court that there is a marked difference between what constitutes sufficient cause which is based upon the justification and what facts constitute an excuse, which does not justify the delay. I have been taken through the documents which are annexed to the application and the chronology of events prior to and after the decree was passed. It was contended based on these facts that there is absolutely no valid explanation offered by the applicant for the gross delay of over 946 days in filing the appeal, the only reason cited is that the Applicant's wife was suffering from cancer; it was further contended from the perusal of the medical records produced by the Applicant, the Applicant had undergone treatment prior to the passing of the decree and was certified as being medically fit, and further that even after the decree was passed, there is material on record to demonstrate that the Applicant's wife was cured and was no

more suffering from any disease. Reference has also been made to certain averments in the memo of appeal to contend that there is no specific date set out either in the appeal or in the application through which the applicant can attribute knowledge of the passing of the decree. On these contentions, the application is sought to be rejected.

5. Before advertng to the specific facts of the case and the circumstances under which the application came to be filed, it would be apposite to make reference to certain judgments of the Supreme Court dealing with the contentions raised by the parties, which are as follows:

The Supreme Court in ***Shivamma (Dead) By LRs V/S Karnataka Housing Board and Ors reported in 2025 SCC OnLine SC 1969*** , while interpreting “sufficient cause” and whilst differentiating between “excuse” and “explanation” has held as under :

22. In Basawaraj v. Special Land Acquisition Officer, (2013) 14 SCC 81, a two-Judge Bench of this Court held that "sufficient cause" as used in Section 5 of the Limitation Act, connotes that the party who failed to file

the appeal or application within the prescribed limitation period, must demonstrate that such failure was not due to negligence, lack of diligence or vigilance, nor the result of indolence or inactivity, and that it was not occasioned by any lack of bona fides. The relevant observations read as under:-

"9. Sufficient cause is the cause for which the defendant could not be blamed for his absence. The meaning of the word "sufficient is "adequate" or "enough", inasmuch as may be necessary to answer the purpose intended. Therefore, the word "sufficient" embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the viewpoint of a reasonable standard of a cautious man. In this context, "sufficient cause" means that the party should not have acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has "not acted diligently" or "remained inactive". However, the facts and circumstances of each case must afford sufficient ground to enable the court concerned to exercise discretion for the reason that whenever the court exercises discretion, it has to be exercised judiciously. The applicant must satisfy the court

that he was prevented by any "sufficient cause" from prosecuting his case, and unless a satisfactory explanation is furnished, the court should not allow the application for condonation of delay. The court has to examine whether the mistake is bona fide or was merely a device to cover an ulterior purpose. []

11. The expression "sufficient cause should be given a liberal interpretation to ensure that substantial justice is done, but only so long as negligence, inaction or lack of bonafides cannot be imputed to the party concerned, whether or not sufficient cause has been furnished, can be decided on the facts of a particular case and no straitjacket formula is possible." I

*(Emphasis
supplied)*

64. Section 3 sub-section (1) of the Limitation Act makes every proceeding filed after the prescribed period, liable to be dismissed, subject however to the provisions in Section(s) 4 to 24 of the Limitation Act. It mandates that it would be the duty of the court to dismiss any suit instituted after the prescribed period of limitation irrespective of the fact that limitation has not been set up as a defence. If a suit is ex facie barred by the law of limitation, a court has no choice but to

dismiss the same even if the defendant intentionally has not raised the plea of limitation. [See: V.M. Salgaocar and Bros. v. Board of Trustees of Port of Mormugao, (2005) 4 SCC 613]

65. The above exposed fundamental pillars of the law on limitation, namely, (i) that the sword of prosecution ought not to be hanging over an individual for an indeterminate period and (ii) those who have been lethargic in safeguarding their interests should not expect the law to come to their rescue, are reflected in Section 3 of the Limitation Act, more particularly sub-section (1) inasmuch as it enjoins a duty upon the courts to dismiss any suit instituted, appeal preferred and application made, after the period of limitation prescribed therefor by Schedule I irrespective of the fact whether the opponent had set up the plea of limitation or not. It is the duty of the court not to proceed with the application if it is made beyond the period of limitation prescribed.

66. Thus, the Limitation Act is an embodiment of a clear legislative policy that litigation must be commenced, prosecuted, and concluded within a definite timeframe. Section 3 of the Limitation Act

gives effect to this mandate in categorical terms by obligating courts to dismiss every suit, appeal, or application instituted beyond the prescribed period, irrespective of whether limitation is raised as a defence. This provision is not a matter of discretion but of duty, for it reflects the underlying public interest in ensuring certainty, finality, and repose in legal disputes.

Raj Singh v. Union of India, (2023) 10 SCC 531]

120. Sometimes, due to want of sufficient cause being shown or an acceptable explanation being proffered, delay of the shortest range may not be condoned whereas, in certain other cases, delay of long periods can be condoned if the explanation is satisfactory and acceptable. Of course, the courts must distinguish between an "explanation and an "excuse". An "explanation is designed to give someone all of the facts and lay out the cause for something. It helps clarify the circumstances of a particular event and allows the person to point out that something that has happened is not his fault, if it is really not his fault. Care must, however, be taken to distinguish an "explanation from an "excuse". Although people tend to see "explanation" and "excuse" as the same thing and struggle to find out the difference between the two,

there is a distinction which, though fine, is real. [See: Sheo Raj Singh v. Union of India, (2023) 10 SCC 531]

217. As illustrated in Sheo Raj Singh (supra) an "excuse" is often offered by a person to deny responsibility and consequences when under attack. It is sort of a defensive action. Calling something as just an "excuse" would imply that the explanation proffered is believed not to be true. An "explanation" on the other hand would demonstrate genuineness in actions and reasons assigned, and would other wise be devoid of any gross negligence, deliberate inaction or lack of bona fides, or indifference or casualness in conduct. Thus said, there is no formula that caters to all situations and, therefore, each case for condonation of delay based on existence or absence of sufficient cause has to be decided on its own fact.

6. In ***Union Of India and Anr V/s Jahangir Byramji Jeejeebhoy, Thr His LRs reported in 2024 SCC OnLine SC 489***, the Supreme Court, held that while deciding application for condonation of delay the Courts have to look into the bonafides of the explanation given for the

delay, and the relevant paragraphs are quoted herein;

“25. It hardly matters whether a litigant is a private party or a State or Union of India when it comes to condoning the gross delay of mere than 12 years. If the litigant chooses to approach the court long after the lapse of the time prescribed under the relevant provisions of the law, then he cannot turn around and say that ne prejudice would be caused to either side by the delay being condoned. This litigation between the parties started sometime in 1981, We are in 2024. Almost 43 years have elapsed. However, till date the respondent has not been able to reap the fruits of his decree. It would be a mockery of justice if we condone the delay of 12 years and 158 days and once again ask the respondent to undergo the rigmarole of the legal proceedings.

26. The length of the delay is a relevant matter which the court must take into consideration while considering whether the delay should be condoned or not. From the tenor of the approach of the appellants, it appears that they want to fix their own period of limitation for instituting the proceedings for which law has prescribed a period of limitation. Once it is held that a party has lost his right to have the matter considered on merits because of his own inaction for a long, it

cannot be presumed to be non deliberate delay and in such circumstances of the case, he cannot be heard to plead that the substantial justice deserves to be preferred as against the technical considerations. While considering the plea for condonation of delay, the court must not start with the merits of the main matter. The court owes a duty to first ascertain the bona fides of the explanation offered by the party seeking condonation. It is only if the sufficient cause assigned by the litigant and the opposition of the other side is equally balanced that the court may bring into aid the merits of the matter for the purpose of condoning the delay.

27. We are of the view that the question of limitation is not merely a technical consideration. The rules of limitation are based on the principles of sound public policy and principles of equity We should not keep the Sword of Damocles hanging over the head of the respondent for indefinite period of time to be determined at the whims and fancies of the appellants.

33. In the case of Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy. (2013) 12 SCC 649, this Court made the following observations:

"21. From the aforesaid authorities the principles that can broadly be culled out are.

21. 1. (i) *There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.*

21.2. (ii) *The terms "sufficient cause should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.*

21 3. (iii) *Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis*

21.4. (iv) *No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.*

21.5. (v) *Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.*

21 6. (vi) *It is to be kept in mind that adherence to strict proof should not affect public justice*

and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

21.7 (vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play

21.8. (viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation

21.9. (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach

21.10. (x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

21.11. (xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

21.12 (xii) The entire gamut of facts are to be carefully scrutinised and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception

21.13. (xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

22. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are

22.1. (a) An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the courts are required to

condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

22.2. (b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

22.3. (c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

22.4. (d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters.

7. In ***Majji Sannemma V/S reddy Sridevi and Ors reported in 2021 (18) SCC 358***, the Supreme Court refused to condone the delay of 1011 days, considering it to be huge, as it defeats the purpose of justice, the relevant

paragraphs are given below;

7.5. In Pundlik Jalam Patil, it is observed by this Court that the court cannot enquire into belated and stale claims on the ground of equity. Delay defeats equity. The courts help those who are vigilant and "do not slumber over their rights".

8. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand and considering the averments in the application for condonation of delay, we are of the opinion that as such no explanation much less a sufficient or a satisfactory explanation had been offered by Respondents 1 and 2 herein appellants before the High Court for condonation of huge delay of 1011 days in preferring the second appeal. The High Court is not at all justified in exercising its discretion to condone such a huge delay. The High Court has not exercised the discretion judiciously. The reasoning given by the High Court while condoning huge delay of 1011 days is not germane. Therefore, the High Court has erred in condoning the huge delay of 1011 days d in preferring the appeal by Respondents 1 and 2 herein original defendants. Impugned order passed by the High Court is unsustainable both, on law as well as on facts.

8. The Supreme Court in ***M/S Sycamore Growmore Pvt. Ltd and 4 Ors V/S Mr. Lourenco Fernandes reported in (2021) SCC OnLine Bom 12165***, as held that the quality of the explanation given in condonation of delay applications has to be considered while deciding such application , the same is held as under:

25. The contesting respondents cannot disown their Advocate whenever it is convenient to them. Such casual disowning, in a belated attempt to justify a patent false statement, ought not to have been accepted by the Tribunal, in such a casual manner.

26. In Salil Dutta vs. T. M. and M. C. Private Ltd., (1993) 2 SCC 185 the Hon'ble Supreme Court has held that the advocate is the agent of the party. His acts and statements made within the limits of authority given to him are the acts and statements of the principal, ie, the party who engaged him. Though it is true that in certain situations, the Court may, in the interest of justice, set aside a dismissal order or an ex parte decree notwithstanding the negligence and/or misdemeanor of the advocate where it finds that the client was an innocent litigant, there is no such absolute rule that a party can disown its advocate at any time and seek

relief. No such absolute immunity can be recognized. Such an absolute rule would make the working of the system extremely difficult. The observations in Rafiq vs. Munshilal. (1981) 2 SCC 788, where the Court had observed that no party should suffer for the mistake of his Advocate, must be understood in the facts and circumstances of that case and cannot be understood as an absolute proposition.

33. Therefore, based on such allegation of fraud, there was no question of Tribunal condoning inordinate and unexplained delay of 4 years and 194 days. It is true, that length of delay is not only determinative factor. The quality of cause shown is most important factor. In this case, even the quality of cause shown was deficient since, same was based on a patently false statement. The Tribunal therefore exercised discretion perversely, ignoring the decisions of the Hon'ble Supreme Court in such matters.

9. The main principles that can be culled out from the case law with reference to above are as follows:

- i. That the words "sufficient cause" means that parties should not act in a negligent manner or there was want of bonafide on its part and this is required to be

demonstrated by making necessary averments in the application and producing the material on record to substantiate the bonafide.

ii. That the Limitation Act is an embodiment of the legislative policy, that litigation must be commenced, prosecuted and concluded within a definite time frame; Section 3 of the Limitation Act gives effect to this mandate and prescribes a period of limitation as also sets out that an application is instituted beyond the prescribed period, would be beyond the jurisdiction of the Appellate Court, unless sufficient cause is set out to cross the bar of limitation. Sufficient cause has to be demonstrated by offering an explanation for the delay, and this is not to be confused with an offer of an excuse for the delay. It is only when the delay is properly explained and does not partake of an excuse for the delay, that the same could constitute sufficient cause for condoning delay.

10. With these principles in the background, I proceed to

examine the specific circumstances under which the present application has been filed and whether the facts stated in the application, could constitute sufficient cause for condoning the delay.

11 The suit was filed in the year 2007 and was contested by the Defendant No.1, who filed a written statement and was represented throughout by an Advocate. The Plaintiff and all his witnesses have been extensively cross-examined and the Defendant No.1 himself led evidence and was cross-examined. The decree was passed on 30.06.2022, and records the presence of the Advocate for the Defendant No.1/Applicant at time the same was pronounced. The Applicant was therefore, very much represented by Counsel and it must be presumed that when his Counsel was present, at the time the decree was passed that the Applicant had knowledge of the such decree.

12. The application for condonation of delay has just 7 paragraphs on which only paragraphs 3, 4 and 5 contained averments which, according to the Applicant offer justification of a condonation of 946 days delay. Paragraph 3

of the application states that the delay was caused due to the Applicant's wife, suffering from cancer and due to the treatment of his wife at the hospital. The same paragraph also alleges that the applicant's advocate had not intimated him about the passing of the judgment and decree. Paragraph 4 of the application only states that irreparable loss and prejudice would be caused to the applicant if the delay is not condoned, while paragraph 5 states that this is a fit case for condoning of delay. Thus, the entire explanation attempting to justify delay is contained in paragraph 3 of the application, which is twofold, i.e. the applicant's wife was under treatment for cancer and that the Advocate had not informed the applicant of the decree passed against him.

13. For the first explanation, the applicant has produced an entire cache of documents which are medical papers, diagnosis of the Applicant's wife who was suffering from breast cancer and stating what was the line of treatment and the follow up done with the patient. From these documents, what is clear is that the Applicant's wife was diagnosed and

suffering from breast cancer and admitted to Manipal Hospital on 20.01.2022 and was ultimately discharged after completing 8 cycles of chemotherapy on 22.04.2022. The decree was passed on 30.06.2022 immediately after the applicant's wife was discharged.

14. The further documents would demonstrate that the Applicant's wife followed up with visits to the hospital between 01.08.2022 and 11.04.2023 during which period she completed her PET-scan and on 21.01.2024, her report is found on record to state that she has not been suffering from the disease. From the record therefore it is clear that the treatment of the applicant's wife was successfully completed prior to the decree being passed and all that was done after the decree was passed for a period from 01.08.2022 to 21.01.2023 was a checkup to ascertain that the disease had not gone into remission. None of the documents justify why the applicant was precluded from meeting his Advocate and ascertaining the outcome of the suit or challenging the decree.

15. There is no document on record to show any

correspondence between the applicant and the Advocate of the Applicant or any affidavit or statement that he visited his advocate during this period. In the application, the applicant states that he was never informed by the Advocate and hence, had no knowledge of the decree. He makes no positive statement as to the source from which he gained knowledge, that the decree was passed. In contrast, perusal of paragraph 11 of the memo of appeal would reveal that apart from the stand taken, that the trial Court Advocate had not intimated the Appellant of the passing of the decree, the Appellant makes a statement that “ after serving of the notice of execution proceedings through mobile, he approached this Court and applied for certified copy on 03.01.2025 which was ready on 13.01.2025”. Here again there is no statement made as to how he gained knowledge of the passing of the decree and who has disclosed the decree to him. Thus, there is no statement made either in the application or the appeal memo as to the date of knowledge of passing of the decree.

16. Considering all these facts, it is established that, the

excuse, that the appeal which has been filed is delayed due to the disease of the Applicant's wife, is from the face of it false and without any bonafides. The material to establish that, the Applicant's wife has been successfully treated, prior to the decree and after the decree visited the hospital, on a couple of occasions but was not suffering from any disease. The Application, also is devoid of any statement as to how the applicant gained knowledge of the decree, demonstrates, application has not approached the Court to show his Bonafide, offering proper justification.

17. For all these reasons, in my opinion there is absolutely no justification offered for the gross delay of 946 days. A decree has been passed in favour of the Respondent No.1 which has attained finality and challenge to it is barred by limitation in terms of Section 3 of the Limitation Act. Since no justification has been offered in terms of Section 5 of the Limitation Act, no sufficient cause has been shown. The application is therefore rejected.

18. The Executing Court is now free to proceed with the

execution of the decree qua the applicant /defendant No.1/
judgment debtor No.1 and bring the execution proceedings in
relation to defendant No.1 to its logical conclusion. The
execution of the decree shall be carried out preferably by
15.01.2026, keeping in mind various directions issued by the
Hon'ble Supreme Court in ***Periyammal, Thr LR's and
Others V/S V.Rajamani and Another reported in
2025 SCC OnLine SC 507.***

VALMIKI MENEZES, J.