



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL ST. NO. 13491/2024
WITH
INTERIM APPLICATION NO.8598/2025
WITH
INTERIM APPLICATION NO. 8597/2025
IN
FIRST APPEAL ST. NO. 13491/2024

CHANDI PRASAD PODDAR ..APPELLANT
VS
RAMKUMAR SHEWCHANDRAY AND
SONS PVT LTD., MUMBAI AND ORS. ..RESPONDENTS

WITH
FIRST APPEAL ST. NO. 13502/2024
WITH
INTERIM APPLICATION NO.8739/2025
WITH
INTERIM APPLICATION NO. 8740/2025
IN
FIRST APPEAL ST. NO. 13502/2024

ASHOK KUMAR PODDAR ..APPELLANT
VS.
RAMKUMAR SHEWCHANDRAY AND
SONS PVT. LTD. MUMBAI & ORS. ..RESPONDENTS

Mr. Pradeep Sancheti a/w Mr. Nityoah Mehta a/w Vidhi Raichana i/b
Nityoah Suneel And Associates, Ld. Advocates for appellant/applicant in
FAST/13491/2024, IA/8598/2025, IA/8597/2025.

Ms. Pooja Kshirsagar Kane, Ld. Advocate for appellant/applicant. in
IA/8739/2025, IA/8740/2025 & F.A./ST/13502/2024.

Mr. Mehul Shah i/b Bharat Joshi for Respondent Nos.2 to 4 in
F.A./ST/13502/2024 & Respondent 2, 3-a to 3-c in IA/8740/2025,
IA/8739/2025 & IA/8598/2025.

CORAM : RAJESH S. PATIL, J.
DATE : 4 SEPTEMBER 2025.

P.C. :

INTERIM APPLICATION NO. 8597/2025 IN FIRST APPEAL ST. NO. 13491/2024 AND INTERIM APPLICATION NO.8739/2025 IN FIRST APPEAL ST. NO. 13502/2024:-

- 1.** These Interim Applications are filed for seeking condonation of delay of 162 days in filing the First Appeal. Admittedly, the applicants in both the interim applications were not parties in the suit before the trial Court.
- 2.** For convenience the facts of Interim Application No.8739/2025 are considered herein below.
- 3.** It is submitted before me by the learned senior counsel for applicants that initially the suit was filed in this Court, and upon an application preferred by the appellants, they were joined as parties to defend the suit. However, the Division Bench of this Court, by its order dated 5.04.2025, observed that the father of present applicant is holding shares in the company and that if the company i.e. Ramkumar Shewchandray & Sons Pvt. Ltd. does not defend the suit properly, it will act to the detriment of the company. It is always open to the appellants to adopt proceedings in accordance with law to safeguard the interests of the company.
- 4.** Hence, the present Applicant was unable to appear in the suit. Subsequently, the said suit was transferred to the City Civil Court at

Bombay, due to a change in the monetary jurisdiction of the City Civil Court. In the present appeal, the appellant has applied for a certified copy of the Judgment. It is admitted before me that the certified copy of the judgment was applied for by Ashok Poddar, whose application was rejected. So far as the application preferred by Chandi Prasad Poddar for certified copy of impugned judgment is concerned, it was accepted on 29.04.2024 and same was allowed on 3.05.2024. The First Appeal with Delay Application is filed on 2.05.2024, based on the copies available on the website of City Civil Court.

5. The major grounds for condonation of delay in filing the appeal is ground No.x, xi, para 6,7 and 8, the same read as under :-

“x. The Appellant had a meeting with Rajendra Prasad on or about and requested him to file an Appeal challenging the Impugned Order. At that time, Rajendra Prasad assured him that he will do the needful on behalf of the Defendant Company. Rajendra Prasad has assured the Appellant that the Defendant would file an Appeal to challenge the Impugned Order. The Appellant therefore waited for some time. Thereafter, the Appellant addressed a letter dated 27th January 2024 to Rajendra Prasad once again requesting him to take steps to challenge the Impugned Order. Hereto annexed and marked as Exhibit “I” is a copy of the order dated 27th January 2024. On 5th February 2024, Rajendra Prasad replied to the Appellant and informed him that he is taking appropriate steps in this regard.

xi. Thereafter, the Appellant has attempted to approach Rajendra Prasad on several occasions but in vain. The Appellant waited for some time, hoping that the Impugned Order will be challenged by Rajendra Prasad as assured by him to the Appellant. Despite, there being an order against the Defendant to sell the Suit Property valued at 100 crores at only meager amount of Rs.20 lacs, the Defendant company under management and control of Rajendra Prasad has chosen to not file an Appeal. The Appellant has reasons to believe Rajendra Prasad is deliberately not willing an Appeal due to surreptitious dealings with the Plaintiffs and to avoid payment of fair value of shares to the Appellant

and Chandi Prasad. This inaction on part of the Defendant Company/Rajendra Prasad is directly prejudicial to the interest of the Appellant and the original Defendant.

6. *The Appellant is not party to the Suit and therefore cannot apply for certified copy of the Impugned Order. Thus the delay is calculated from the date of the Impugned Order.*

7. *The Appellant was pursuing the board of directors/Rajendra Prasad to file an Appeal challenging the Impugned Order. The Appellant waited for some time hoping that the Defendant company under control and management of Rajendra Prasad would file an Appeal as per the assurance given to the Appellant by Rajendra Prasad. However, the Defendant Company has chosen not to file an Appeal for obvious reasons. In these circumstances, the Appellant is constrained to file an Appeal. The delay if any, in filing the Appeal is due to peculiar facts and circumstances as set out herein. Thus, the delay if any, is unintentional and not deliberate.*

8. *The Appellant submits that if the delay is not condoned, grave loss, harm and prejudice will be caused to the Appellant and other shareholder of the Defendant. In fact, the only asset of the Defendant will be sold at a meager value and the shares of the Appellant would fetch negligible value. The Appellant has good case on merits and the Impugned Order deserves to be set aside and quashed. It is submitted that no harm or prejudice will be caused to the Respondents if the present Interim Application is allowed and the delay is condoned.”*

6. Mr. Shah appearing on behalf of respondent nos. 2 to 4, opposed the delay condonation application. He submitted that there is no sufficient cause for allowing the application, as the applicant was fully aware of the passing of the decree on 23 October 2023, and they were pursuing it with the management of respondent no.1 company as claimed by them. The online copy of impugned Judgment and Order was available on 25 October 2023 on website. The applicant was claiming that the First appeal is in the nature of derivative action on behalf of respondent no.1 – company, and the

manner in which it is pursued amounts to abuse of the process of Court, as the company failed to prosecute the claim diligently. The applicant does not have any locus to file the derivative action on behalf of the respondent company. The interim application should be dismissed with compensatory costs.

7. Leave to file the First Appeal preferred by both the appellants has been allowed by the Co-ordinate Bench of this Court vide order dated 25.04.2025. Against the said order passed by Co-ordinate Bench, the matter was carried to Supreme Court (**Pankaj Anantrai Bhuwa & Ors. Vs. Chandi Prasad Poddar & Ors., Special Leave to Appeal (C) Nos. 22596-22597/2025.**). The said SLP filed before the Supreme Court by Respondent Nos.2 and 3 was rejected by order dated 29.08.2024.

8. So far as the detriment to the company is concerned, it is submitted before me that the said company is being run by the brother of the present applicant, one Mr. Rajendra Prasad Poddar. There are dispute and differences between the brothers and it has been submitted before me that the brother of the applicant, Rajendra Prasad Poddar is acting against the interest of the company.

9. Supreme Court in the judgment of *Collector, Land Acquisition, Anantnag and another Vs. Mst. Katji and Others* reported in *1987 SC*

1353, has held that:

“Every day’s delay must be explained” does not mean that a pedantic approach should be made. Why not every house’s delay. Every second’s delay ? The doctrine must be applied in a rational common sense pragmatic manner.”

10. Supreme Court in the case of ***S. Ganesharaju (Dead) through Lrs V. Narasamma (Dead) through Lrs*** reported in ***(2013) 11 SCC 341***, more specifically, paragraph Nos. 12 and 13, of the said judgment held that a liberal construction to the cause of delay should be given. The said paragraphs are reproduced herein below:

12. The expression “sufficient cause” as appearing in Section 5 of the Limitation Act, 1963, has to be given a liberal construction so as to advance substantial justice. Unless the respondents are able to show malafides in not approaching the court within the period of limitation, generally as a normal rule, delay should be condoned. The trend of the courts while dealing with the matter with regard to condonation of delay has tilted more towards condoning delay and directing the parties to contest the matter on merits, meaning thereby that such technicalities have been given go-by.

13. The rules of limitation are not meant to destroy or foreclose the right of parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly.

11. Bombay High Court in the judgment of ***Kamalbai Narasaiyya Shrimal and Another Vs. Ganpat Vithalrao Gavare*** reported in ***2007 (1) MH. L.J. 807***, paragraph Nos.13 and 15 has held:

13. The factual position is manifestly clear on bare perusal of the application for condonation filed by the petitioners before the learned District Judge. The only relevant statement in the application is thus:

“The delay caused in preferring the appeal is of six months. The caused delay is not intentional one. The appellants are poor and helpless persons. If the delay is not condoned appellant may cause irreparable loss which cannot be compensated in terms of money. The

suit was for recovery of possession and present appellants are tenants. If the delay is not condoned then appellants will become shelterless.”

15. The expression “sufficient cause” cannot be erased from section of the Limitation Act by adopting excessive liberal approach which would defeat the very purpose of section 5 of the Limitation Act. There must be some cause which can be termed as a sufficient one for the purpose of delay condonation. I do not find any such “sufficient cause” stated in the application and as such no interference in the impugned order is called for.”

12. In my view, considering the law laid down in above mentioned judgments and the grounds stated in the interim applications, it is sufficient to condone delay in filing the first appeal.

13. Interim Application No. 8597/2025 in First Appeal St. No.13491/2024 and Interim Application No.8739/2025 in First Appeal St. No. 13502/2024 stand allowed in terms of prayer clause (a) and disposed of accordingly.

INTERIM APPLICATION NO. 8598/2025 AND INTERIM APPLICATION NO. 8740/2025 :-

14. Stand over to 17 October 2025. To be listed under the caption “For Hearing”.

10. Ad-interim relief granted earlier continued till next date of the hearing.

(Rajesh S. Patil, J.)