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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3668 OF 2025

Lakhamshi Narshi deleted since Deced.

Thr Usha Mangesh Mehta ... Petitioner

V/s.

Prafulla Devendrapal Singh Chauhan

and ors ... Respondents

Mr. Jaydeep Deo a/w Onkar Gawade, for the Petitioner.

Mr. Shravan Vyas for respondent nos.1 to 5.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 19, 2025

P.C.:

1. This Petition is filed under Article 227 of the Constitution of India. The petitioner is challenging the legality and validity of the judgment and order dated 4 February 2025 passed by the Small Causes Court in MARJI Application No. 291 of 2023 in RAE Suit No.1202 of 2014. By the said order, the petitioner's application for condonation of delay, which according to the Court was of 166 days but according to the petitioner was of 31 days, came to be rejected.

2. The petitioner claims to be the legal representative of the original defendant, who was party to the suit. The Trial Court passed a decree for possession on 3 May 2023. The case of the petitioner is that she was not informed by her Advocate about the

progress of the matter or about the passing of the decree. She claims that only when the bailiff visited the suit premises on 6 October 2023 for execution, she came to know about the decree. Thereafter, she filed an application on 20 November 2023 for setting aside the ex parte decree. In that application, the delay was stated as 166 days. It was also mentioned that the petitioner, who is the original defendant No.1, suffers from polio and is unable to walk.

3. The said application was opposed by the landlord by filing reply. It was contended that the petitioner-defendant No.1(c) was never in possession of the suit premises. She never carried on any business with the tenant during his lifetime and therefore was not entitled to inherit tenancy rights.

4. It was further submitted by the landlord that the record shows inconsistency in the petitioner's case. Though the application states that the certified copy of the decree was applied for on 20 November 2023, the verification of the delay condonation application bears the date 10 November 2023. In fact, the certified copy was applied for on 3 November 2023 and delivered on 9 November 2023. This contradiction, according to the landlord, shows that the grounds taken in the application are not correct.

5. The Trial Court, after considering rival submissions, refused to condone the delay. It relied on several judgments of the Supreme Court and this Court which lay down that unless sufficient cause is shown, delay cannot be condoned. The Trial

Court observed that except a vague statement that the petitioner came to know of the decree only when the bailiff came for execution, no convincing explanation has been given. Such explanation cannot be treated as sufficient cause. On this reasoning, the Trial Court rejected the application.

6. On perusal of the application for condonation of delay, it is clear that in paragraph 5 the petitioner-defendant No.1(C) has specifically stated that she is unable to walk as she suffers from polio. This fact was not disputed before the Trial Court. In such circumstances, it was expected of the Trial Court to examine the plea of delay with due regard to the petitioner's physical disability. Courts are expected to adopt a sympathetic approach while dealing with applications where genuine hardships are shown, particularly when disability restricts the applicant's capacity to effectively defend her case.

7. It further appears from the record that the petitioner did not contest the suit proceedings. Her explanation that she became aware of the decree only when the bailiff visited the premises for execution cannot be brushed aside lightly. This explanation stands supported by the sequence of events placed on record. Moreover, it is also an undisputed fact that in execution of the decree, possession of the suit premises has already been taken by the landlord. Therefore, as of today, the petitioner is not in possession of the suit property. This fact lends support to her stand that she had no knowledge of the proceedings earlier.

8. Learned Advocate for the petitioner has relied on the

judgment of the Supreme Court in *Balwant Singh vs. Jagdish Singh and Others*, (2010) 8 SCC 685, and the judgment of this Court in *Vaishnavi Engineers and Developers Pvt. Ltd. vs. Navnath Ramkrishna Mhatre and Others* (Writ Petition No.5611 of 2025).

9. In both these judgments, it has been held that the expression “sufficient cause” under Section 5 of the Limitation Act has to be interpreted liberally, to advance the cause of justice. At the same time, the Courts have also cautioned that a liberal approach cannot be extended to cases where the explanation is fanciful or mala fide. The conduct of the party must always be a guiding factor.

10. In the present case, the petitioner has demonstrated a genuine cause for the delay. She has placed on record her physical disability arising out of polio, which restricts her movements and makes it difficult for her to attend court proceedings regularly. This fact is mentioned in her application and has not been seriously disputed by the landlord. The petitioner has further explained that she came to know of the decree only when the bailiff visited the premises for execution. This explanation is consistent with the factual position that she was not participating in the trial and had no prior intimation about the progress of the case.

11. There is no material on record to suggest that the petitioner deliberately avoided the proceedings or that she acted with mala fides. The record also does not disclose any attempt on her part to gain undue advantage by delaying the filing of the application. On the contrary, once she became aware of the decree, she applied for a certified copy and filed the necessary application within a

reasonable time.

12. The law under Section 5 of the Limitation Act requires the Court to adopt a liberal approach where sufficient cause is shown, so that substantive rights are not defeated merely on technical grounds of limitation. The Supreme Court and this Court have repeatedly held that where there is no deliberate negligence or mala fide conduct, the Court should lean towards condonation of delay, as denial of such relief may result in grave injustice.

13. The Trial Court, however, rejected the application by terming the explanation as vague. In doing so, it failed to appreciate the petitioner's physical condition and the circumstances in which she came to know of the decree. Justice requires that a litigant should not be deprived of an opportunity to contest her case merely because she suffers from a disability or because she was unaware of the proceedings until the stage of execution.

14. In my view, therefore, the explanation offered by the petitioner satisfies the test of sufficient cause under Section 5 of the Limitation Act. The Trial Court erred in adopting a rigid approach and in failing to consider the matter in the light of fairness, equity, and advancement of justice.

ORDER

- i. The impugned judgment and order dated 4 February 2025 passed by the Small Causes Court, Mumbai in MARJI Application No. 291 of 2023 in RAE Suit No.1202 of 2014 is quashed and set aside.

- ii. MARJI Application No. 291 of 2023 filed by the petitioner for condonation of delay stands allowed. The delay is hereby condoned.
- iii. The application filed by the petitioner under Order IX Rule 13 of the Code of Civil Procedure for setting aside the ex parte decree shall be heard and decided by the Trial Court on its own merits and in accordance with law.
- iv. The Trial Court shall afford reasonable opportunity to both parties to place their case before passing final orders.
- v. All contentions of both sides on merits are kept open.

(AMIT BORKAR, J.)