

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5875 OF 2025

Arvind Dying And Bleaching Mills Pvt Ltd ..Petitioner
Through Its Power of Attorney Holder Shri M.D.
Kaingade

Versus

Formost Through Its Prop K. N. Abdul Gafoor ...Respondent

Mr. Sanjay Kshirsagar, for the Petitioner.

CORAM: N. J. JAMADAR, J.

DATED : 7th MAY 2025

P.C.:

- 1.** Heard the learned Counsel for the Petitioner.
- 2.** The challenge in this Petition is to an order dated 28th August 2024 passed by the learned Civil Judge, Senior Division, Ichalkaranji, Dist. Kolhapur, whereby the learned Civil Judge, has condoned the delay in filing an Application to set aside the ex-parte decree.
- 3.** The learned Counsel for the Petitioner-Plaintiff submits that, perusal of the Application for condonation of delay would reveal that the Respondent-Defendant had not ascribed any reason in the Application. He merely stated that for the reasons stated in the accompanying Affidavit, the delay of about 89 days in filing the Application to set aside the ex-parte decree be condoned. In the

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Affidavit which accompanied the said Application, the Respondent-Defendant has ascribed reasons to the effect that he had entrusted the brief to an Advocate and as he was not conversant with the local language, he could not peruse the matter with the local Advocate.

4. Since the Respondent-Defendant has ascribed justifiable reasons in the Affidavit in Support of the Application, the fact that in the body of the Application those reasons were not specifically spelt out would be a matter of challenge to form rather than the substance.

5. Moreover, when the trial Court has exercised discretion to condone the delay, the Writ Court in exercise of supervisory jurisdiction is not expected to interfere with such order. There is a subtle distinction in the approach expected of the Appellate or Revisional Court in the matter of condonation of delay. Where the trial Court had condoned the delay, that amounts to exercise of positive discretion and it cannot be lightly interfered with unless the order is perverse or the delay has been condoned sans any reason. On the contrary, if the trial Court has refused to condone the delay, the entire matter is open before the Appellate Court or Revisional Court.

6. A useful reference, in this context, can be made to the decision of the Supreme Court in the case of *N. Balakrishnan V/s. M. Krishnamurthy*¹ wherein the law was enunciated as under:

¹ AIR 1998 SC 3222.

“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 want of acceptable explanation whereas in certain other cases delay of 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 reversional jurisdiction, unless the exercise of discretion was on whole untenable grounds or arbitrary or perverse. But it is a different matter when the first cut refuses to condone the delay. In such cases, the superior cut 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.”

7. In view of the aforesaid enunciation of law, I am not persuaded to agree with the submission of the learned Counsel for the Petitioner.
8. Petition stands dismissed.

[N. J. JAMADAR, J.]