

MJ Jadhav

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10512 OF 2025**

Santaji Jagannath Veer And Ors. ... Petitioners

Vs.

Anandrao Yedu Veer ... Respondent

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MANGALTAI
JAYWANT
JADHAV
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Mr. Vedant Prashant Dasare for the Petitioners.

CORAM : GAURI GODSE, J.

DATED : 5th AUGUST 2025

ORDER:

1. This petition is filed by the defendants to challenge the order that allows an application for condonation of delay of 10 months and 9 days and restoration of the suit. By the impugned order, the delay is condoned and the suit is restored subject to payment of cost of Rs.5,000/-.

2. Learned counsel for the petitioners submits that the miscellaneous application was filed by the respondent only for condonation of delay in applying for restoration of the suit and there was no prayer for restoration of the suit. He therefore submits that in the absence of any prayer for restoration, the trial Court exceeded the jurisdiction and restored the suit while condoning the delay. He

therefore submits that serious prejudice is caused to the rights created in favour of the petitioners in view of the dismissal of the suit. To support his submissions, learned counsel for the petitioners relies upon the decision of the Hon'ble Apex Court in the case of ***Akella Lalitha Vs. Konda Hanumantha Rao and Another***¹. He submits that the Apex Court has held that the relief not found on pleadings should not be granted depriving the respondent of an opportunity to resist such a relief. He thus submits that the Apex Court held that granting a relief which is not prayed would lead to miscarriage of justice. He therefore submits that the impugned order would therefore require interference by this Court.

3. I have perused the papers of the petition. Though the miscellaneous application is filed as an application under Section 5 of the Limitation Act for condonation of delay, the respondent has raised all the grounds in the application for restoration of the suit after condonation of delay of 10 months and 9 days. The prayer clause 3(b) in the application may not be very happily worded but the contents of the application and the prayer is for restoration of the suit after condonation of delay. The petitioners have filed a reply to the application. The contents of the reply would also indicate that the petitioners have dealt with the plaintiff's contentions for

1 2022 SCC OnLine SC 928

non-appearance and for restoration of the suit. Thus the parties understood and treated the application as an application for restoration of the suit and condonation of delay. The trial Court has therefore rightly considered the rival submissions of the parties and decided the application for restoration of the suit after condoning the delay.

4. On the merits, the learned Judge has relied upon the documentary evidence of medical certificate produced by the plaintiff for his non-appearance and condonation of delay. The plaintiff has also led oral evidence to support his contentions. Thus, the trial Court has believed the material relied upon by the plaintiff and thus restored the suit after condonation of delay by imposing cost.

5. In the decision of the Hon'ble Apex Court relied upon by the learned counsel for the petitioners, it is held that the relief if not found on the pleadings should not be granted and if the Court considers or grants a relief for which no prayer was made or pleading made, it would deprive the respondent of an opportunity to oppose or resist such a relief.

6. In the facts of the present case the pleadings for restoration of the suit and condonation of delay are opposed by the petitioners by

filing a reply. The rival contentions and pleadings of the parties pertain to restoration of the suit and condonation of delay. Hence, in the facts of the present case, the decision relied upon by the learned counsel for the petitioners would not be of any assistance to the arguments raised on behalf of the petitioners.

7. The delay in applying for restoration of the suit is explained by the plaintiffs. The Trial Court has correctly appreciated the rival pleadings of the parties and accepted the reason for restoration and condonation of delay as a sufficient and reasonable. Learned counsel for the petitioners submits that the respondents had filed a separate application for restoration alongwith the delay condonation application. The impugned order takes into consideration the relevant grounds raised for condonation of delay and restoration of the suit. In view of the order dismissing the suit on the ground of non-appearance by the plaintiff, I do not find any substance in the technical objections raised by the petitioners as the rival contentions of the parties are already dealt with in the impugned order pertaining to both the prayers.

8. Hence, I see no illegality or perversity in the reasons recorded in the impugned order. No prejudice is caused to the petitioners as the petitioners in their reply dealt with both the prayers for

restoration of the suit and for condonation of delay in applying for restoration. Hence, there is no reason to interfere with the impugned order in the exercise of the discretionary jurisdiction under Article 227 of the Constitution of India.

9. The Writ Petition is therefore dismissed.

(GAURI GODSE, J.)