

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

**WRIT PETITION NO. 15623 OF 2025**

Uma Engineering and ors. ...Petitioners

**Versus**

Maharashtra Small Scale Industries ...Respondent

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SUBHASH  
KULKARNI

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Mr. Aseem Naphade, a/w Deepanjali Mishra, i/b Kamlakar  
Koli, for the Petitioners.

Mr. Shahnaz Baig, for Respondent No.2.

**CORAM: N. J. JAMADAR, J.**

**DATED: 26<sup>th</sup> NOVEMBER, 2025**

**Order:-**

1. Heard the learned Counsel for the parties.
2. The learned Counsel for the respondents seeks leave to tender affidavit-in-reply.

Leave granted.

3. Affidavit-in-reply is taken on record.
4. This petition under Article 227 of the Constitution of India takes exception to an order dated 12<sup>th</sup> September, 2025 passed by the learned Judge, City Civil Court, in Notice of Motion No.3112 of 2022 in SC Suit No.8792 of 1993, whereby the Notice of Motion taken out by the petitioners – plaintiffs to review the order dated 29<sup>th</sup> June, 2022 passed in Notice of Motion No.3174

of 2018 whereby an *ex parte* decree was set aside, came to be rejected.

5. The petitioners instituted a suit for the sum of Rs.5,50,000/- along with interest against in the respondent. Despite entering appearance through Advocate Mahimkar and Company, the respondent did not file the written statement and, therefore, the suit proceeded *ex parte*. By a judgment and decree dated 11<sup>th</sup> March, 2015, the suit came to be decreed.

6. The respondent preferred an application to set aside the *ex parte* decree under Order IX Rule 13 of the Code. The application was allowed by the learned Civil Judge by an order dated 29<sup>th</sup> June, 2022.

7. The plaintiffs preferred an application to review the said judgment and order on the basis of discovery of facts and documents which revealed that the reasons in the application for setting aside the *ex parte* order were not genuine.

8. By the impugned order dated 12<sup>th</sup> September, 2025, the learned Judge, City Civil Court, dismissed the Notice of Motion holding that, there was no error apparent on the face of the record or any other sufficient cause to review the order dated 29<sup>th</sup> June, 2022.

9. The learned Counsel for the petitioner submitted that, the material on record, which the petitioner has obtained under Right to Information Act, would indicate that, at the relevant point of time no VRS Scheme was implemented by the respondent and, therefore, the cause assigned in the application that the matter could not be pursued as 219 employees of the respondent had opted for VRS, was a subterfuge. It was urged that, the delay in taking out the Notice of Motion to set aside the *ex parte* decree was not satisfactorily explained. The learned Judge, City Civil Court, condoned the delay in a mechanical manner.

10. I am not persuaded to accede to the aforesaid submission. It is imperative to note that there is subtle yet significant distinction in the approach to be adopted by the Court exercising appellate or supervisory jurisdiction, in a case where the Court, at the first instance, has exercised the discretion to condone the delay and, in a case, where the application for condonation of delay is rejected. In the former case, the condonation of delay being an act of exercise of positive discretion, the superior or revisional Court would not ordinarily interfere with such finding unless it could be shown that no reason was ascribed. In the latter case, however, the Appellate

or Revisional Court can independently determine the sufficiency of cause for the condonation of delay.

11. 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*<sup>1</sup> wherein the approach to be adopted by the Court in the matter of condonation of delay was expounded as under:

“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.

10. The reason for such a different stance is thus:

The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. Time limit fixed for approaching the court in different situations in not because on the expiry of such time a bad cause would transform into a good cause.

11. Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. the object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer

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**1** AIR 1998 Supreme Court 3222,

persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim Interest *reipublicae up sit finis litium* (it is for the general welfare that a period be putt to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

12. A court knows that refusal to condone delay would result foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide *Shakuntala Devi Jain V/s. Kuntal Kumari (AIR 1969 SC 575)* and *State of W.B. V/s. Administrator, Howrah Municipality ((1972) 1 SC 366)*.

13. It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of *mala fides* or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss."

(emphasis supplied)

12. In the case at hand, the learned Judge, City Civil Court, took into account the reasons ascribed by the respondent for the condonation of delay. Primarily, the loss of time in the consultative process and organizational changes in the respondent weighed with the learned Judge. It is trite, the impersonal nature of the Government or public enterprises

warrants some allowance, even though no distinction can be made between a private litigant and a Government in the matter of condonation of delay.

13. In the instant case, the learned Judge, City Civil Court, has evaluated the sufficiency of cause ascribed by the defendants and recorded a positive finding that, the delay deserved to be condoned and the *ex parte* decree deserved to be set aside. Such exercise of positive discretion is not amenable for interference in exercise of supervisory jurisdiction. As the discretion exercised by the Court below advances the cause of substantive justice by promoting the determination of the lis on merits, rather than on technicalities, this Court does not find any justifiable reason to interfere with the impugned order.

14. Hence, the petition stands dismissed.

[N. J. JAMADAR, J.]