

Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 553 OF 2025

M/s. Rajgod Sahakari Sakhar Kharkhana
Ltd.

...Appellant

Versus

The Maharashtra State Farming Co-
operation Ltd.

...Respondent

WITH

INTERIM APPLICATION NO. 12124 OF 2025

SANTOSH
SUBHASH
KULKARNI

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Mr. Balasaheb Deshmukh, for the Appellant – Applicant.

CORAM: N. J. JAMADAR, J.

DATED: 30th SEPTEMBER, 2025

Order:-

1. Heard the learned Counsel for the appellant.
2. This second appeal is directed against the judgment and order dated 31st July, 2021, passed by the learned District Judge, Pune, in Misc. Application No. 884 of 2021, whereby the District Judge rejected the application for condonation of 9 years, 11 months and 2 days delay in filing appeal against the judgment and decree dated 14th November, 2011 passed by the trial Court in Special Civil Suit No.271 of 2009.
3. The respondent – original plaintiff instituted a suit for recovery of an amount of Rs.36,74,823 against the appellant –

defendant. The defendant contested the said suit. On 14th November, 2011, after appraisal of the evidence and material on record, the trial Court passed a decree and thereby directed the defendant to pay Rs.36,74,823 alongwith interest at the rate of 15% per annum from 1st December, 2008 and further interest till realization.

4. The defendant did not prefer any appeal. After the defendant received notice in Special Darkhast No.17 of 2021 filed by the plaintiff to execute the said decree, the appellant initiated steps to assail the said decree by filing an appeal on 24th November, 2021 alongwith an application for condonation of 9 years, 11 months and two days delay in preferring the said appeal.

5. In the said application, the appellant asserted that the defendant was not aware of the passing of the said decree as Mr. Ananta Khopde, its then authorized officer, who was looking after the affairs of the said proceeding, passed away on 20th July, 2013 and the Advocate, who was entrusted with Special Civil Suit No. 270/2009, also did not apprise the defendant about the passing of the said decree.

6. The application was resisted by the respondent – plaintiff.

7. By the impugned order, the District Judge was persuaded to reject the application opining, *inter alia*, that none of the two grounds pressed into service by the defendant constituted a sufficient cause to condone the huge delay of 9 years and 11 months. Holding that, the defendant failed to satisfactorily account for the delay, the learned District Judge rejected the application.

8. Mr. Balasaheb Deshmukh, the learned Counsel for the appellant, submitted that the learned District Judge committed a manifest error in law in rejecting the application for condonation of delay without properly evaluating the justifiability of the cause ascribed by the appellant, on the well recognized parameters for consideration of a prayer to condone the delay. The learned District Judge non-suited the appellant by observing that the appellant failed to lead evidence to substantiate the causes ascribed in the application, without providing an opportunity to lead evidence. This gives rise to a substantial question of law.

9. An endeavour was also made by Mr. Deshmukh to draw home the point that on the merits, the appellant has an excellent case and, in the event, the delay is not condoned the appellant would suffer grave prejudice.

10. I am unable to accede to the submissions of Mr. Deshmukh. The facts are hard and gross. Indisputably, the decree was passed by the trial Court on 14th November, 2011, after a full-fledged trial. The defendant was fully aware of the proceedings in the suit. The twin reasons sought to be ascribed by the appellant were that Mr. Ananta Khopde, the Authorized Officer, passed away on 20th July, 2013 and the learned Advocate also did not inform the appellant about the passing of the decree.

11. *Ex facie*, none of the ground carries any conviction. On the first ground, as rightly noted by the learned District Judge, Mr. Ananta Khopde passed away after more than 20 months of the passing of the degree in Special Civil Suit No.270 of 2000. Moreover, the material on record indicated that the written statement was sworn by one Balasaheb Bhilare and the very same officer was authorized by the resolution of the petitioner to prosecute the application for condonation of delay. It implied that Mr. Balasaheb Bhilare, who was working since prior to the decree came to be passed, was still working with the appellant at the time of filing of the application for condonation of delay.

12. Secondly, the learned District Judge rightly held that the contention that the Advocate for the defendant did not apprise

the defendant about the said trial was, *prima facie*, a subterfuge. The fact remained that the defendant did participate in the trial in the said suit. It defies comprehension that for almost 10 years the defendant would not have made inquiries about the outcome of the said suit.

13. It is true the courts lean in favour of condonation of delay so as to advance the cause of substantive justice. An application for condonation of delay receives liberal consideration so that procedure which is a handmaid of justice is not allowed to score a march over substantive justice. However, the delay cannot be condoned as a matter of course. When the delay appears both inordinate and unexplained, the exercise of discretion to condone the delay in a mechanical manner would defeat the ends of justice.

14. Undoubtedly, the sufficiency of the cause ascribed for the delay is of prime consideration. However, the length of delay also assumes critical salience. If there is an inordinate delay of almost ten years, the onus rests on the party seeking condonation of delay to satisfactorily account for such a long period. In the absence of such a satisfactory explanation, the discretion cannot be exercised in a routine manner as it would cause grave prejudice to the adversary.

15. A profitable reference in this context can be made to a recent judgment to the Supreme Court in the case of *Thirunagalingam v. Lingeswaran*¹. The Supreme Court has cautioned against condonation of huge delay as an act of generosity. The observation in paragraphs 31 and 32 read as under.

“31. It is a well-settled law that while considering the plea for condonation of delay, the first and foremost duty of the court is to first ascertain the bona fides of the explanation offered by the party seeking condonation rather than starting with the merits of the main matter. Only when sufficient cause or reasons given for the delay by the litigant and the opposition of the other side is equally balanced or stand on equal footing, the court may consider the merits of the main matter for the purpose of condoning the delay.

32. Further, this Court has repeatedly emphasised in several cases that delay should not be condoned merely as an act of generosity. The pursuit of substantial justice must not come at the cost of causing prejudice to the opposing party. In the present case, the respondents/defendants have failed to demonstrate reasonable grounds of delay in pursuing the matter, and this crucial requirement for condoning the delay remains unmet.”

(emphasis supplied)

16. In the case of *H. Guruswamy and others vs. A. Krishnaiah since deceased by LR(s)*², the Supreme Court again emphasised that the concepts of, “liberal approach”, and “substantial justice” should not be employed to frustrate the law of limitation. It was enunciated that the length of the delay is definitely a relevant matter which the Court must take into

1 2025 INSC 672.

2 2025 SCC Online SC 54.

consideration while deciding whether the delay should be condoned or not. The observations of the Supreme Court in paragraphs 13 to 17 are instructive and hence, extracted below:

“13. We are at our wits end to understand why the High Court overlooked all the aforesaid aspects. What was the good reason for the High Court to ignore all this? Time and again, the Supreme Court has reminded the District judiciary as well the High courts that the concepts such as “liberal approach”, “Justice oriented approach”, “substantial justice” should not be employed to frustrate or jettison the substantial law of limitation.

14. We are constrained to observe that the High Court has exhibited complete absence of judicial conscience and restraints, which a judge is expected to maintain while adjudicating a lis between the parties.

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

16. The length of the delay is definitely a relevant matter which the court must take into consideration while considering whether the delay should be condoned or not. From the tenor of the approach of the respondents herein, it appears that they want to fix their own period of limitation for the purpose of instituting the proceedings for which law has prescribed a period of limitation. Once it is held that a party has lost his right to have the matter considered on merits because of his own inaction for a long, it cannot be presumed to be non-deliberate delay and in such circumstances of the case, he cannot be heard to plead that the substantial justice deserves to be preferred as against the technical considerations. While considering the plea for condonation of delay, the court must not start with the merits of the main matter. The court owes a duty to first ascertain the bona fides of the explanation offered by the party seeking condonation. It is only if the sufficient cause assigned by the litigant and the opposition of the other side is equally balanced that the court may bring into aid the merits of the matter for the purpose of condoning the delay.

17. We are of the view that the question of limitation is not merely a technical consideration. The rules of limitation are based on the principles of sound public policy and principles of equity. No court should keep the ‘Sword of Damocles’ hanging over the head of a litigant for an indefinite period of time.”

(emphasis supplied)

17. The submission of Mr. Deshmukh that the District Judge committed a grave error in rejecting the application for condonation of delay on the ground that no evidence was led, without providing an opportunity to lead evidence, if viewed in the backdrop of the facts of the case, does not carry any substance. The reasons ascribed by the appellant were so inherently improbable that no amount of evidence would substantiate the case of condonation of huge delay of almost ten years.

18. The learned District Judge, thus, committed no error in rejecting the application for condonation of delay. No substantial question of law arises for consideration.

19. Hence, the Second Appeal stands dismissed.

20. In view of disposal of the appeal, IA/12124/2025 stands disposed.

[N. J. JAMADAR, J.]