

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

**INTERIM APPLICATION NO.1364 OF 2025
(condonation of delay)
IN
SECOND APPEAL (STAMP) NO.1918 OF 2025**

Vijay Kashinath Bhoir	Applicant
IN THE MATTER BETWEEN	
Vijay Kashinath Bhoir	Appellant
V/S	
Pravin Kashinath Bhoir	Respondent

**WITH
SECOND APPEAL (STAMP) NO.1918 OF 2025**

Vijay Kashinath Bhoir	Appellant
V/S	
Pravin Kashinath Bhoir	Respondent

**WITH
INTERIM APPLICATION NO.1365 OF 2025
(for stay)
IN
SECOND APPEAL (STAMP) NO.1918 OF 2025**

Vijay Kashinath Bhoir	Applicant
IN THE MATTER BETWEEN	
Vijay Kashinath Bhoir	Appellant
V/S	
Pravin Kashinath Bhoir	Respondent

Mr. Kunal Patel *a/w Mr. Vijaykumar Mishra for the Appellant.*
Mr. P. D. Prasad Rao *a/w Ms. Devika M. Purav for Respondent.*

**CORAM: SANDEEP V. MARNE, J.
DATE : 9 APRIL 2025.**

P.C.:

1 The Application is filed seeking condonation of delay of 536 days in preferring the Second Appeal against judgment and order dated 29 April 2023 passed by the District Judge-3, Vasai, dismissing Regular Civil Appeal No.8 of 2017 and confirming the judgment and decree dated 19 December 2015 passed by the Joint Civil Judge Junior Division, Vasai in Regular Civil Suit No.261 of 2005.

2 I have heard Mr. Patel, the learned counsel appearing for the Appellant and Mr. Rao, the learned counsel appearing for Respondent Nos.1 to 4 and 6.

3 The delay in filing the present Appeal is inordinate. It runs into 536 days. The Appeal was dismissed on 29 April 2023 whereas the Second Appeal together with Application for condonation of delay has been lodged in this Court on 16 January 2025. The explanation pleaded by the Applicant in his Application for seeking condonation of inordinate delay of 536 days is as under:

“7. Thereafter, the Applicant states that the pursuant to the impugned judgement and decree dated 29th April 2023, he approached Advocate on record who was representing him before the Ld. First Appellate Court who did state that as the Writ Petition No. 10999 of 2022 is already filed before this Hon'ble Court impugning the common order dated 8th June 2022 passed below Exhibit 21 & 23 filed in R.C.A. No. 08 of 2017 for leading additional evidence and remanding the matter the Ld. Trial Court for leading additional evidence of the Applicant upon the amended plaint.

8. Thus, as per the legal advice of the Advocate on record representing the Applicant before the Ld. First Appellate

Court, it was unnecessary for the Applicant to challenge the said judgement and decree dated 29th April 2023 before this Hon'ble Court as once the aforesaid interim order is set aside by this Hon'ble Court, the R.C.A. No. 08 of 2017 will be automatically restored to file of Ld. District Judge-3. At Vasai for the Applicant to lead additional evidence which was erroneously rejected by the Ld. First Appellate Court thereby impugning the same before this Hon'ble Court in Writ Petition No. 10999 of 2022. Hereto annexed and marked "EXHIBIT A" is the copy of the petition of the Writ Petition No. 10999 of 2022 without exhibits. Hereto annexed and marked as "EXHIBIT B" is the copy of the common order dated 8th June 2022 passed below Exhibit 21 & '23 filed in R.C.A. No. 08 of 2017.

9. Further, the Applicant states that upon further enquiring with the Advocate on record representing the Applicant before the Ld. First Appellate Court, he stated that the aforesaid Writ Petition is pending before the Hon'ble Court and the Applicant has to await its decision for impugning the Judgement and Decree passed by the Ld. First Appellate Court as well as the Ld. Trial Court.

10. Considering the substantial amount of time elapsed from the date of the impugned Judgement and Order, the Applicant repeatedly approached the Advocate on record representing the Applicant before the Ld. First Appellate Court to enquire as to the status of the aforesaid Writ Petition and as to the final hearing of the same.

11. Consequently, the Applicant states that he being suspicious of the factum that the aforesaid Writ Petition was not diligently handled by the Advocate on record representing the Applicant before the Ld. First Appellate Court as the Advocate representing the Applicant before this Hon'ble Court in the aforesaid Writ Petition was being appointed through the Ld. First Appellate Court, Advocate and the Applicant to enquire about the case status of the aforesaid Writ Petition was necessitated to approach the Advocate on record representing the Applicant before the Ld. First Appellate Court.

12. However, upon much pleading of the Advocate on record representing the Applicant before the Ld. First Appellate Court Applicant the was pleased to provide certified copies of the impugned Judgement and Decree dated 29th April 2023 Ld. District Judge - 3, At Vasai on 11th November 2024.

13. Accordingly, the Applicant was constrained to approach another Advocate in the month of January, 2025 considering the passage of such an elongated time in the decision of the aforesaid Writ Petition who was pleased to hand over the order dated 24th January 2023 passed by this Hon'ble Court wherein the aforesaid Writ Petition was withdrawn by the Advocate for the Applicant to the utter shock and surprise of the Applicant which was completely unknown to the knowledge of the Applicant. Hereto annexed and marked as "EXHIBIT C™ is the copy of the withdrawal order dated 24th January 2024 passed by this Hon'ble Court in Writ Petition No. 10999 of 2022."

4 It is Applicant's case that during pendency of the Appeal before the First Appellate Court, he had filed Writ Petition No.10999 of 2022 in this Court challenging the order dated 8 June 2022 passed by the First Appellate Court. By order dated 8 June 2022, the First Appellate Court had rejected the Applicant's application for remand of the Appeal to the Trial Court for recording additional evidence under Order 41 Rule 27 of the Code of Civil Procedure, 1908. Writ Petition No.10999 of 2022 was however withdrawn by Petitioner on 24 January 2023 and the Appeal has thereafter been decided by the First Appellate Court on 29 April 2023.

5 It is sought to be contended by Patel that withdrawal of Writ Petition No.10999 of 2022 by the Advocate was without instructions and that therefore the Applicant was never aware about withdrawal thereof on 24 January 2023. He would contend that the Applicant was under impression that the said Petition continued to remain pending before this Court. I find this contention to be utterly false. Firstly, there is no specific pleading in the application that the Applicant had never

instructed his Advocates to withdraw Writ Petition No.10999 of 2022. What is sought to be pleaded in paragraph 13 of the Application is acquisition of knowledge of order dated 24 January 2023 by the Applicant in January 2025. Secondly, no document is placed on record to indicate that the Applicant wrote to his advocates questioning them as to how the petition was withdrawn without instructions. Thirdly, no proceedings are taken seeking recall of the order dated 24 January 2023.

6 In my view, the whole story sought to be woven by the Applicant for seeking condonation of delay of 536 days is utterly false. Writ Petition No.10999 of 2022 was filed for remand of proceedings to the Trial Court for recording of additional evidence. With disposal of the Appeal, nothing would have survived in Writ Petition No.10999 of 2022 and therefore it is highly unbelievable that the Advocate of the Applicant would advice him not to challenge the decree of the First Appellate Court on account of pendency of the Writ Petition.

7 What really makes the case of the Applicant worse is the fact that the decree came to be executed on 6 November 2023. He informed the Bailiff/Surveyor that he intended to file Appeal against the decree of the first Appellate Court. Thus, on 6 November 2023 itself, the Applicant was aware of the position that he was required to file Appeal against the decree dated 29 April 2023. He specifically informed the Surveyor on 6 November 2023 that he was in the process of filing the Appeal against the decree of the first Appellate Court. Therefore, the statement

made in the application for condonation of delay that till January 2025 the Applicant was under impression that Writ Petition No.10999 of 2022 was pending is utterly false. Therefore further contention that it was not necessary for him to file Appeal against the decree on account of pendency that Petition is also fallacious.

8 The Applicant is seeking to blame various Advocates for the purpose of explaining his own negligent conduct. He first attempts to accuse the Advocates who represented him before this Court in Writ Petition No.10999 of 2022 alleging that they withdrew the Petition without his instructions. He then seeks to blame the Advocate who represented him before the First Appellate Court for giving wrong advice of non-requirement to challenge the decree dated 29 April 2023 on account of pendency of Writ Petition No.10999 of 2022. Applicant is thus habitual in blaming his Advocates for the purpose of justifying his own negligence.

9 The Appellant clearly informed the Surveyor on 6 November 2023 that he was in the process of filing Appeal. However, he now falsely pleads that he remained under impression till January 2025 it was not necessary to file an Appeal on account of pendency of Writ Petition.

10 In my view therefore, Applicant has made false statements on oath in the present Application. He is therefore not entitled to the discretionary and equitable relief of condonation of delay.

11 Ratio of the judgments in *Mool Chandra vs. Union of India*, (2025) 1 SCC 625 and *Inder Singh vs. State of Madhya Pradesh*, 2025 SCC OnLine SC 600 relied on by Mr. Patel cannot be applied to the facts of the present case. In the present case, this Court has found that the Applicant has made false averments on oath in the application for condonation of delay. The conduct exhibited by the Applicant would disentitle him from exercise of discretionary jurisdiction for condonation of inordinate delay of 536 days. The decree has been executed in November 2023. The Applicant simply slept over his remedies and did not take any steps even after November 2023 for filing the Appeal. Thus, negligence as well as conduct exhibited by the Applicant is such that this Court would be loath exercising equitable jurisdiction for condoning inordinate delay of 536 days.

12 In my view therefore, no case is made out by the Applicant for condonation of inordinate delay of 536 days. The Interim Application No.1364 of 2025 for condonation of delay is accordingly **rejected**.

13 With rejection of Application for condonation of delay, nothing would survive in the Second Appeal which also stands **dismissed**.

14 With dismissal of the Second Appeal, nothing would survive in Interim Application No.1365 of 2025 for stay and the same is also disposed of.

(SANDEEP V. MARNE, J.)