

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

**INTERIM APPLICATION NO. 13713 OF 2025
IN
FIRST APPEAL NO. 1339 OF 2013**

**The State of Maharashtra
(through Executive Engineer,
Public Works Division, Alibag – Raigad)**

... Applicant

IN THE MATTER BETWEEN

**The State of Maharashtra
(through Executive Engineer,
Public Works Division, Alibag – Raigad)**

**... Appellant
(Orig. Opponent)**

V/s.

M/s. T.M. Jadhav & Co.

**... Respondent
(Orig. Plaintiff)**

**WITH
INTERIM APPLICATION STAMP NO. 35640 OF 2025
WITH
INTERIM APPLICATION STAMP NO. 37338 OF 2025
IN
FIRST APPEAL NO. 1339 OF 2013**

Adv. A. R. Patil, Addl. G.P. for the State-Applicant/(original Appellant)

Adv. Sumi Soman a/w. Adv. Indrakumar Lahot i/b. M/s. Praxis Legal for
Respondent

**CORAM : R.I. CHAGLA AND
FARHAN P. DUBASH, JJ.**

**RESERVED ON : 16th DECEMBER 2025
PRONOUNCED ON : 22nd DECEMBER 2025**

ORDER (Per Farhan P. Dubash J.) :

1. On 27th September 2018, the Registrar (Judicial – II) passed a self-operative order (**impugned order**) granting four weeks' time to the State of Maharashtra (original Appellant/Applicant herein) to take steps to serve the Respondent failing which, the First Appeal would stand dismissed. Since the original Appellant/Applicant herein failed to comply with the impugned order, the First Appeal came to be dismissed (without any further order) upon expiry of the said period of four weeks. The original Appellant/Applicant herein has filed the present Interim Application on 23rd September 2025 *inter alia* seeking to quash and set aside the impugned order and to thereafter restore First Appeal bearing no. 1339 of 2013 to the file of this Court. The present Interim Application also seeks condonation of delay of 6 years and 11 months in preferring such application for issuing fresh notice on the Respondent.

SUBMISSIONS OF PARTIES

2. With a view to explain the delay on the part of his client in complying with the directions contained in the impugned order, Mr. A. R. Patil, learned Government Pleader (GP) invites our attention to paragraph 2 of the present Interim Application, where it is stated that the matter came up before the Registrar (Judicial – II) on 27th September 2018 when the office of the Government Pleader learnt that notice was issued to the Respondent and

returned unserved by the Bailiff. It is further stated that the Registrar (Judicial – II) thereafter granted the Applicant, four weeks' time to take steps as against the unserved Respondent, failing which, the Applicant was put to notice that the First Appeal would stand dismissed. The said paragraph 2 then fast-forwards straight to 2025, when it is stated that by a letter dated 12th September 2025 the office of the Government Pleader asked the Executive Engineer, Public Works Division, Alibag - Raigad to furnish the present and complete address of the Respondent so as to enable the Applicant to issue fresh notice on them and it is only thereafter, viz. on 12th September 2025, when the *new* address of the Respondent at Pune viz. Jadhav Building, Ramwadi, Plot No. 5, S.R. No. 29, Behind Laxmi Medical Store, Pune, Nagar Road, Dist. Pune was provided to the Applicant, that they were in a position to serve them. He points out the *old* address of the Respondent at Panvel was at Krishna Vaibhav, Flat No. 3, Pantnagar, Chendare, Alibag – Raigad, 402201.

3. In this background, paragraph 4 of the present Interim Application seeks to explain the delay on the ground that it was occasioned since the Applicant was unaware of the *new* address of the Respondent and the office of the Government Pleader took some time to ascertain the same. Mr. A.R. Patil accordingly submits that the delay was wholly unintentional and was caused for reasons beyond the control of his clients and the same is required to be condoned.

4. On the other hand, Ms. Sumi Soman, learned Advocate appearing on behalf of the Respondent vehemently opposes the reliefs sought in the present Interim Application. She submits that the Applicant has made more than one, false and misleading statement therein and on this ground alone, is disentitled to the reliefs sought by it. She points out that as far back as on 3rd May 2013, the Civil Judge, Senior Division, Alibag – Raigad had passed a judgment and order in Special Civil Suit No. 31 of 2003 in favour of her client, thereby directing the Applicant/Appellant/Original Defendant in the suit, to pay a sum of Rs. 3,33,76,420/- along with interest at the rate of 9% per annum to the Respondent herein and since then, her client has been deprived of the fruits of the said decree.

5. Ms. Soman states that being aggrieved by this judgment and order, the Applicant had preferred First Appeal No. 1339 of 2013 in this Court, which came to be admitted by an order dated 7th October 2013 and by orders dated 20th February 2015 and 3rd March 2015 passed by this Court in Civil Application No. 3657 of 2013, the judgment and order had been directed to be stayed (at the behest of the Applicant), subject to the condition that the Applicant deposits 50% of the decretal amount within a period of twelve weeks therefrom. Despite securing such order, she points out that the Applicant failed

to make this deposit which accordingly, resulted in the interim relief being vacated, by a subsequent order dated 31st August 2015.

6. Ms. Soman points out that on multiple occasions since then, and as more particularly recorded in various orders passed by the Registrar (Judicial – II) including *inter alia* orders dated 30th October 2015, 3rd August 2018, 30th August 2018 and 27th September 2018, the Applicant was granted time to serve the Respondent which it failed to do. As a result, the First Appeal came to be dismissed pursuant to non-compliance with the directions contained in the self-operative order dated 27th September 2018 that has been impugned herein.

7. Ms. Soman informs us that the Respondent had initiated execution proceedings against the Applicant, on or about 6th November 2015 by filing Special Dharkhast No. 200103 of 2015 before the Civil Judge, Senior Division, Alibag – Raigad and notice of the same was duly served upon the Applicant, who has since been attending to the said execution proceedings. She therefore points out that the stand taken by the Applicant in the present Interim Application that the Applicant was unaware of the Respondent's address and as a result, was unable to serve them, is not only false and incorrect but also contrary to the record, inasmuch as, during the period since November 2015,

the Applicant has been regularly appearing in the Alibag - Raigad Court in the execution proceedings preferred by the Respondent.

8. In any event, Ms. Soman refers to the averment made in paragraph 2 of the present Interim Application and submits that the comment "*address not given, hence notice not issued*" made by the Bailiff (through whom the Applicant sought to effect service on the Respondent at that time) reveals that no address was provided by the Applicant and therefore, she submits that it is entirely incorrect on the part of the Applicant to contend that the *new* address of the Respondent was not known and therefore service could not be affected on them.

9. Ms. Soman states that the Respondent had changed its address from Alibag to Pune, sometime in 2024 and the new address was also disclosed to the Applicant in the execution proceedings. She invites our attention to the letter dated 17th August 2024 that is annexed at Exhibit-G to the Affidavit-in-Reply (to the present Interim Application) from which it is revealed (by looking at the address mentioned in the letterhead of the Respondent) that the Pune address was known to the Executive Engineer, Public Works Division, Alibag - Raigad (representing the Applicant in the execution proceedings in the Alibag - Raigad court) since at least, 17th June 2024.

10. Ms. Soman is also at pains to point out that immediately after the passing of the judgment and order dated 3rd May 2013, the Respondent had filed a caveat in this Court and as a result, it is surprising that the Applicant contends that it is unaware of the address of the Respondent, which address is also contained in the caveat. In this regard, our attention is invited to the order dated 7th October 2013 which records the presence of advocate Mr. Victor Basu, who appeared on behalf of the Respondent-Caveator in the First Appeal and also to subsequent orders dated 20th February 2015 and 31st August 2015 passed therein when the Respondent was represented by advocates. She therefore submits that the Applicant was always well aware of the address of the Respondent and it is only because of their negligence that service was not affected on them.

11. Ms. Soman therefore submits that the Applicant has made a false and misleading statement that, ***'the concerned officer took time to find out the present fresh/correct address'***, in paragraph 4 of the present Interim Application. She submits that the Applicant has also intentionally not disclosed the pending executing proceedings in which they have been appearing, which if disclosed, would expose the false and dishonest case pleaded by them in the present Interim Application. She therefore submits that not only has the Applicant not been diligent but in fact, the Applicant is guilty of gross negligence and has resorted to approaching this Court by making false

statements. She pleads that the present Interim Application is nothing but a deliberate attempt to frustrate the lawful judgment and order passed in favour of the Respondent on 3rd May 2013, the fruits of which, till date, they have not been able to realize. She therefore submits that the present Interim Application is required to be dismissed with costs.

ANALYSIS AND FINDINGS

12. We have considered the submissions made by both the parties and also perused the record that is available before us which unequivocally reveals that the Applicant has approached this Court with a case that since it was unaware of the address of the Respondent, service could not be affected on them and it is only when they became aware of the *new* address of the Respondent, that it has preferred the present Interim Application (on 23rd September 2025). In fact, in paragraph 4 of the present Interim Application, there is a categoric statement (made on oath by the Deputy Executive Engineer, Public Works Division, Alibag, District Raigad) which reads thus: *"...The Applicant says that there was delay in preferring abovementioned Interim Application, as the concerned officer took some time to find out the present fresh/correct address of Sole Respondent..."*. Besides this omnibus explanation, no other details and/or particulars have been provided seeking to explain and/or

even attempting to justify the exorbitant delay of 6 years and 11 months in serving the Respondent and in preferring the present Interim Application.

13. On the contrary, the record reveals a diametrically opposite position viz. the Applicant has always been aware of the address of the Respondent including *interalia* on 27th September 2018 when the impugned order was passed directing them to serve the Respondent. This position is borne out from several documents including the papers and pleadings in Special Civil Suit No. 31 of 2003 which came to be decreed on 3rd May 2013; Caveat filed by the Respondent in this Court pursuant to the judgment and order dated 3rd May 2013; proceedings and orders passed in the execution proceedings preferred by the Respondent being Special Darkhast No. 200103 of 2015 filed by the Respondent before the Civil Judge, Senior Division, Alibag – Raigad, where the Applicant has been attending and appearing since 2015 even till date.

14. In this background, we are shocked to note the contents of the present Interim Application which seeks to explain an inordinate delay of over 6 years and 11 months by simply asserting that the same was occasioned because the Applicant was unaware of the fresh/correct address of the Respondent. Consequently, we agree with the Respondent's submission that

the Applicant has approached this Court with a false case and by making incorrect statements and on this ground alone, we are inclined to dismiss the present Interim Application.

15. Even otherwise, the explanation given by the Applicant cannot be accepted and deserves to be outright rejected for the following reason. In paragraph 2 of the present Interim Application, it is stated: *"The Applicant says that the above-mentioned matter came up before the Hon'ble Registrar (Judicial – II) on 27.09.2018 and at that time, Office of the Government Pleader, High Court, (A.S.), Mumbai learnt that notice was issued to Sole Respondent is returned unserved with bailiffs remark 'Address not given hence notice not issued'. The Registrar Court granted 4 weeks time to take steps as against unserved Sole Respondent without fail, failing which the Interim Application would stand dismissed against unserved Sole Respondent in the above matter"*. From the above statement, it is *ex-facie* evident that the Applicant had not provided any address of the Respondent to the bailiff which resulted in service being unsuccessful. Hence, this was not a case where service was not affected because of an incorrect/changed address. There is absolutely no explanation and/or justification provided by the Applicant as to why the Respondent's address was not provided to the bailiff in 2018 or any at time thereafter, till September 2025 when, for the first time, after almost 7 years, the office of the Government Pleader addressed a letter dated 12th

September 2025 and called upon the Executive Engineer, Public Works Division, Alibag - Raigad to furnish the complete address of the Respondent.

16. In ***Pundlik Jalam Patil (Dead) by LRS. Vs. Executive Engineer, Jalgaon Medium Project and Anr.***¹ the Supreme Court has frowned on the conduct of a public authority and held that when an incorrect statement is made in an application seeking condonation of delay, that in itself, is sufficient to reject the application without any further inquiry as to whether the averments made, reveal sufficient cause to condone the delay. The Supreme Court frowned on such an act whilst reiterating that a party taking a false stand to overcome the bar of limitation should not be encouraged to get any premium on the falsehood on its part by condoning delay by relying on its earlier decision in ***Binod Bihari Singh Vs. Union of India***². Applying these principles to the case in hand, this Court has no hesitation in refusing to condone the delay and rejecting the present Interim Application.

17. Even otherwise, the explanation offered in the present Interim Application is vague, omnibus and does not disclose any cogent or bonafide cause which prevented the Applicant from complying with the directions contained in the impugned order. In a recent Supreme Court decision in

1 (2008) 17 SCC 448

2 (1993) 1 SCC 572

Shivamma (Dead) by LRS Vs. Karnataka Housing Board³, the provisions of Section 5 of the Limitation Act, 1963 has been authoritatively clarified and the Apex Court has expressly disapproved the routine practice of condoning long delays on the basis of stereotype explanations and held that sufficient cause must necessarily explain why the party was unable to act within the prescribed period of limitation. Moreover, the Apex Court has also clarified that the State and its instrumentalities do not enjoy any special or preferential status in matters of limitation by holding that, “210. [F]rom a regime that once accorded preferential indulgence to the State, premised on its bureaucratic complexities and institutional inertia, the law has now evolved to insist upon parity between the government and private litigants. The rationale is that public interest is better served not by excusing governmental inefficiency, but by fostering accountability, diligence, and responsibility in the conduct of public litigation...”. The Supreme Court has further cautioned that condoning unexplained delays has the effect of reopening settled rights, thereby causing serious prejudice to the opposite party and in the bargain, undermining the principle of finality in litigation, which is an essential facet of public policy underlying the law of limitation.

3 2025 SCC Online SC 1969

18. In the present case, there is a delay of 6 years and 11 months. The same is not only gross and unexplained but also reflective of institutional indifference. The present Interim Application does not disclose any circumstance, unavoidable impediment or bonafide effort that would justify the exercise of discretion by this Court. We are conscious that the power to condone delay is discretionary, however, we are required to exercise such discretion judicially and not arbitrarily. In the present case, we are unable to exercise such discretion in favour of the Applicant who has been thoroughly negligent and indifferent to statutory timelines. On this ground also, reliefs sought by the Applicant cannot be granted by this Court and the present Interim Application is liable to be dismissed.

19. Considering the above discussions, we pass the following order:

::ORDER::

1. The present Interim Application is hereby rejected and accordingly, First Appeal No. 1339 of 2013 stands dismissed and is not restored to file.
2. There shall be no order as to costs.

[FARHAN P. DUBASH, J.]

[R.I. CHAGLA, J.]

Ajay Jadhav
IA/13713/20