

D/L.15.
June 22, 2026.
MNS.

FMA No. 1779 of 2025
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CAN 1 of 2025
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CAN 2 of 2025

Rajesh Nolkha and others
Vs.
Smt. Rani Tibrawalla and others

Mr. Shaunak Ghosh,
Mr. Saurav Kumar,
Ms. Puja Naskar, Advs.

... for the appellants.

Mr. Pratyush Patwari, Adv.

...for the respondent nos. 1 and 2.

Re : CAN 2 of 2025 (Condonation of delay)

1. The premise on which the delay in preferring the appeal of about seventy-five days has been sought to be condoned is that there was some inefficiency on the part of the clerk of the learned Advocate handling the matter on behalf of the appellants in the trial court. Apparently, the clerk was technically challenged and was not aware as to how to download an order from the website of the concerned Court.
2. From the averments made in the condonation application, however, it appears that the appellant had duly enquired into the matter and had pursued the matter.
3. Learned counsel appearing for the respondent nos. 1 and 2 opposes the prayer for condonation of delay and submits that the appellants were admittedly aware of the

order on the date of passing of the same itself, that is, July 14, 2025.

4. It is further submitted that the certified copy, however, was applied long thereafter on August 20, 2025.

5. However, on a composite reading of the averments made in the condonation application, it transpires that the reasons for the delay are credible, since it may very well be possible that the clerk of the learned Advocate handling the matter in the trial Court was not sufficiently abreast of the workings of the digital world, which might have presented a challenge to becoming aware of the contents of the impugned order in time.

6. Be that as it may, since no *mala fides* or lack of diligence can be said to be attributable to the appellants directly, this Court is of the opinion that the reason furnished for the delay is sufficient to condone the same.

7. Accordingly, CAN 2 of 2025 is allowed, thereby condoning the delay in preferring FMA No. 1779 of 2025.

8. There will be no order as to costs.

Re: FMA No. 1779 of 2025

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CAN 1 of 2025

9. The present challenge has been preferred against an order whereby the application of the present appellants under Section 5 of the Limitation Act, 1963 for condonation of delay in filing an application under Order IX Rule 13 of the Code of Civil Procedure, in respect of an *ex parte* decree of eviction passed against the appellants, was

dismissed. Consequentially, the application under order IX Rule 13 itself was also dismissed.

10. Learned counsel for the appellants argues that there was laches on the part of the learned Advocate appearing for the appellants and his clerk in the trial court.

11. It is contended that despite having come to know of the impugned *ex parte* decree of eviction and having taken steps, the appellants, due to no fault of theirs, suffered due to the lacunae on the part of the clerk of the learned Advocate handling the matter in the trial court. It is submitted that no litigant should suffer for the drawbacks of their Advocates.

12. Learned counsel for the appellants, in support of his contention that a liberal view ought to be taken in an application under Order IX Rule 13 of the Code, cites an unreported judgment of the Hon'ble Supreme Court in the matter of *Deepesh Maheswari and another Vs. Renu Maheswari and others (Special Leave Petition (Civil) No. 11006 of 2021)*.

13. However, from a bare reading of the cited judgment, it transpires that the same was delivered in the context of a testamentary proceeding, the judgments in which type of matters are in the nature of judgments *in rem* and as such, have wider ramifications against the world at large and are not limited to the private parties involved. Thus, the consideration in such a proceeding cannot be an appropriate analogy for an inter-party dispute *in personam*.

14. In the said report, the Hon'ble Supreme Court was pleased to observe that the scope of proceedings under Section 96 of the Code of Civil Procedure and Order IX Rule 13 of the Code are distinct and the latter confers a wider jurisdiction, enabling the applicant to demonstrate sufficient cause for non-appearance and to seek setting aside of an *ex parte* decree.

15. There cannot be any quarrel with such proposition.

16. However, in the present case, the issue is regarding the condonation of a delay in filing an application under Order IX Rule 13 itself.

17. In the cited report, the Hon'ble Supreme Court was comparing the jurisdictions of the Court while taking up an application under Order IX Rule 13 of the Code, where it was open for the applicant to argue at length as to sufficient cause for non-appearance on the relevant date when the *ex parte* decree was passed, as opposed to an appeal, which is restricted primarily to the merits of the impugned *ex parte* decree.

18. However, in the present case, there is no appeal on board and only an application under Order IX Rule 13 of the Code was filed, that too, after a prolonged delay of about 273 days. Hence, the said judgment, with respect, is not an apposite precedent in the present context.

19. Insofar as the present matter is concerned, the appellants appear to be habitual defaulters, being consistently late in filing challenges at all stages of the *lis*.

20. Although we have condoned the delay in preferring the present appeal, the matter of the fact is that even at the appellate stage, as before the trial Court, the appellants have approached much later than the statutory limitation period.

21. Insofar as the condonation application accompanying the Order IX Rule 13 application was concerned, a copy of which is annexed to a supplementary affidavit filed in Court today, we find that almost no reason worth the name for the delay in preferring the application under Order IX Rule 13 of the Code was disclosed therein.

22. The present appellants merely stated therein that they had appeared through their learned Advocate in the trial Court and thereafter the learned Advocate for the appellants, due to purported non-posting of the matter in the diary of his clerk, could not take steps in the suit.

23. As a result, on the next date of hearing of the suit on September 5, 2023, the learned trial Judge was pleased to take evidence of the plaintiff and the suit was fixed for *ex parte* orders on October 4, 2023. Even if we proceed on the premise that June 8, 2023, which was the date which was misposted in the diary of the clerk of the appellants' Advocate in the trial court, we do not find any conceivable reason as to why the said clerk could not have enquired into the actual date of the suit from the records even thereafter or from his counterpart appearing for the other side in the trial court.

24. Hence, the absence of the appellants through their Advocate on September 5, 2023 cannot be attributed to the misposting of June 8, 2023, a date which preceded the latter date by three months.

25. That apart, even thereafter, the prolonged delay of 273 days after the passing of the *ex parte* decree has not been explained at all apart from in a cursory manner by blaming the learned Advocate appearing for the appellants in the trial court all-so conveniently.

26. Thus, the learned trial Judge was justified in dismissing the condonation application and consequentially the restoration application.

27. Even otherwise, we take note of the fact that the same learned Advocate, due to whose alleged laches the suit was decreed *ex parte*, was again engaged at the stage of the Order IX Rule 13 application as well.

28. Such conduct of the appellants also belies the alleged fault of the learned Advocate at the previous stage.

29. In such view of the matter, we do not find any diligence on the part of the appellants during the long period of 273 days between the passing of the *ex parte* decree and filing of the Order IX Rule 13 application and as such, cannot fault the learned trial Judge in dismissing the condonation application and consequentially the Order IX Rule 13 application.

30. Hence, the impugned order does not call for any interference.

31. Accordingly, FMA No. 1779 of 2025 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

32. CAN 1 of 2025 stands dismissed as well.

33. There will be no order as to costs.

34. Urgent certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Supratim Bhattacharya, J.) (Sabyasachi Bhattacharyya, J.)