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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APDT/23/2026
IA NO: GA/1/2026

GITA KHOSLA
VS
SUBHAM AGARWAL AND ORS.

BEFORE:
The Hon'ble JUSTICE DEBANGSU BASAK
AND
The Hon'ble JUSTICE AJAY KUMAR GUPTA

Date:November 12, 2026.

Appearance:
Mr. Shourjya Mukherjee, Adv.
Mr. Sourajit Dasgupta, Adv.
Mr. Vishwarup Acharyya, Adv.
Mr. Akash Dutta, Adv.
...for the appellant.

Mr. Rajarshi Dutta, Adv.
Mr. SayantanBasu, Adv.
Mr. Shayak Mitra, Adv.
Ms. Manisha Das, Adv.
...for the respondent No. 1.

The Court: This is an application for condonation of delay in filing the appeal.

There is a delay of 942 days.

Learned counsel appearing on behalf of the appellant submits that the appellant was unaware of the judgment and decree dated January 10, 2024 and came to know about the decree when the copy of documents as regards the execution proceeding was served upon her on or about May 22, 2026.

Thereafter, the appellant applied for a certified copy of the judgment and decree through learned advocate. After obtaining the certified copy of the judgment, the draft copy of the appeal and stay were prepared for filing the same before this Court, after vetting and approval from the Senior Advocate. Both were filed after being settled and finalized.

The 942 days' delay in filing the appeal has been explained in paragraph nos. 49, 50 and 51 of the GA application. There was no intentional laches or negligence on the part of the appellant in preferring the appeal beyond the period of limitation. Therefore, such delay may be condoned, and the appeal may be admitted.

On the other hand, learned counsel appearing on behalf of the respondent no. 1 opposes the prayer for condonation by filing an affidavit-in-opposition wherein he narrated that the appellant's delay was not sufficiently explained. Furthermore, he submits that the defendants were fully aware of the proceedings pending before the Learned Court. Defendant Nos.1, 2 and 5 did not file their written statement despite appearance in the suit. The written statement filed by defendant no.4 was not accepted, as defect was not cured despite sufficient opportunity being given, and ultimately the suit was fixed *ex parte* and decided in favour of the Respondents. The appellant was fully aware of the pendency and disposal of the suit but did not disclose all those facts and failed to properly explain the immense delay in the application. He also placed reliance upon a decision of the Hon'ble Supreme Court in the case of ***Shivamma (Dead) by Lrs. v. Karnataka Housing Board and Others*** reported in***2025 SCC OnLine SC***

1969, in support of his submission that the condonation of delay should be explained properly and satisfactorily; otherwise, the limitation application should not be allowed, and the same may be rejected as there is a huge delay.

In reply, the learned counsel for the appellant submits that the delay of 942 days was not intentional and the same may be condoned, and the appeal may be heard on merits. Learned counsel placed reliance on a decision of the Hon'ble Supreme Court in the case of ***C. Prabhakar Rao and Another v. Sama Mahipal Reddy and Another***, reported in ***(2025) 9 SCC 716***, to bolster his submission that, even where a party had appeared in the proceedings and the suit was subsequently dismissed *ex parte*, the delay may be condoned if it is sufficiently explained.

In ***C. Prabhakar Rao and Another (supra)*** Supreme Court was concerned with an order of the High Court passed in revisional jurisdiction. There, the High Court, allowed an application for condonation of delay as also set aside the ex parte decree. So far as the order of condonation of delay was concerned, Supreme Court did not find any material irregularity to interfere with. However, the order of the revisional Court setting aside the ex parte decree, was interfered with. Factual matrix in the present case is different.

In ***Shivamma (Dead) by Lrs (supra)*** Supreme Court dwelt on the meaning and scope of the expression "within such period" used in Section 5 of the Limitation Act, 1963. It held that, the expression "within such period"

cannot be conflated with “during such period” or “for such period”. It also spoke on what is to be understood by “sufficient cause” in Section 5 of the Act of 1963.

Both the authorities noted above, require sufficient cause to be shown for condonation of the delay. In the facts and circumstances of the present case, the delay is of 942 days. The appellant was a party defendant in the suit. Appellant appeared in the suit. Appellant failed to file its written statement in the suit.

In the petition for condonation of delay, there is no explanation advanced on behalf of the appellant as to what steps the appellant took since, its entering of appearance in the suit, failure to file its written statement therein and the eventual decree that was passed therein. Appellant claims to gather knowledge of the impugned judgment and decree on receipt of the application for execution. However, as noted above, the conduct of the appellant from the time that it filed the Vakalatnama in the suit, remains unexplained in the application for condonation of delay for us to accept the version of the appellant that it became aware of the ex parte decree only from the execution petition.

Having heard the submissions of the learned counsels for the parties and considering the materials made available in the application as well as judgments cited by the parties, this Court finds that the appellant did not properly and sufficiently explain the delay of 942 days. Upon perusal of paragraph nos. 49, 50 and 51of the condonation application, this Court

finds that the appellant's explanations are vague, evasive and unsatisfactory.

In such circumstances, we are not satisfied with the explanation offered by the appellant to allow the condonation of delay, and accordingly, the **IA NO: GA/1/2026** is rejected, without any order as to costs.

In view of the dismissal of the condonation application, the appeal being no. **APDT/23/2026** is also, thus, dismissed.

All parties shall act on the basis of the server copy of this order duly downloaded from the official *website* of the Hon'ble High Court at Calcutta.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties expeditiously upon compliance of all required formalities.

(DEBANGSU BASAK, J.)

(AJAY KUMAR GUPTA, J.)

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