

IN THE HIGH COURT AT CALCUTTA
Intellectual Property Rights Division
ORIGINAL SIDE

BEFORE:

The Hon'ble JUSTICE RAVI KRISHAN KAPUR

IPDTMA/7/2025
IA NO: GA-COM/1/2025

SOMANI REALTORS PVT LTD
VS
THE REGISTRAR OF TRADE MARKS, GOVERNMENT OF INDIA AND ANR.

For the appellant	: Mr. Sourojit Dasgupta, Adv. Mr. Avirup Chatterjee, Adv. Mr. Rishov Das, Adv.
For the respondent no.1	: Mr. Pramod Kumar Drolia, Adv. Mr. Santosh Kumar Pandey, Adv.
For the respondent no.2	: Mr. Sayantan Basu, Sr. Adv. Mr. Tanmoy Roy, Adv. Mr. Sagnik Bose, Adv. Ms. Aheriya Roy, Adv.
Heard on	: 28.01.2026
Judgment on	: 28.01.2026

Ravi Krishan Kapur, J.:

1. This is an application under Section 5 of the Limitation Act, 1963, seeking condonation of delay of 951 days in the filing of this appeal. The appeal has been filed under Section 91 of the Trademarks Act, 1999 against an order dated 2 December, 2022. By the impugned order, an application for registration of the trademark filed by the appellant has been deemed to be abandoned.

2. Briefly, the appellant had filed an application on 28 December, 2006 for registration of the mark “SOMANI REALTORS HOME FOR ALL”, being application No.1517507 under Class 37 for real estate etc. The said mark was advertised on 16 January, 2008 and thereafter the respondent no.2 filed an Opposition to the said application. The parties completed their pleadings and the matter was pending before the Registry. There is also a connected suit pending before the High Court at Delhi being C.S.(OS) No.1319 of 2013 for infringement and passing off and the same is being contested by the parties. The above application filed before the Registry has also been referred to in the said suit.
3. It is alleged on behalf of the appellant that the Advocates conducting the suit before the High Court at Delhi had sought instructions from the appellant regarding the status of the application for registration when the representatives of the appellant upon making enquiries came to learn that the concerned Advocate in charge of the firm i.e. Shukla Trademark Company who was looking after the proceedings before the Registry had expired in 2014. Thereafter, the office of Shukla Trademark Registry was engulfed in a massive fire and all the files pertaining to the above proceeding were destroyed. It is alleged that this fact was only made known to the appellant sometime in April, 2025. The appellant also claims that no notice of the hearing dated 1 November, 2022 prior to which impugned order came to be passed was served on the appellant. Upon coming to learn of the above facts, the appellant began to obtain documents and was only able to gather the same on 15 August, 2025. Admittedly, the appellant was unrepresented on 22 November, 2022 when

the hearing took place before the Registry and the impugned order came to be passed. Hence, the delay in filing this appeal.

4. On behalf of the respondent, it is contended that the entire story seeking condonation is concocted and an afterthought. The conduct of the appellant in prosecuting the proceedings before the Trademark Registry has been negligent and lacking in diligence. There is no evidence to suggest that the appellant took any steps to monitor progress, seek updates or pursue the application for trademark for a considerable period of time. There is also no supporting affidavit of any employee or clerk of the office of the erstwhile attorney to justify the delay. The entire story of delay in view of the office of the erstwhile attorney having caught fire and getting destroyed is preposterous. In this regard, the respondent relies on a communication issued in the name of the erstwhile Advocates which suggests that their office continued to exist and operate even in 2019 at the same address and exist even now.

5. Section 5 of the Limitation Act provides as follows;

“Extension of prescribed period in certain cases.—Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.”

6. In *Pathapati Subba Reddy (died) by L.RS & ORS. vs. The Special Deputy Collector (LA)*, (2024) 12 SCC 336, it has been held as follows;

“17. It must always be borne in mind that while construing ‘sufficient cause’ in deciding application under Section 5 of the Act, that on the expiry of the period of limitation prescribed for filing an appeal, substantive right in favour of a decree-holder accrues and this right ought not to be lightly disturbed. The decree-holder treats the decree to be binding with the lapse of time and may proceed on such assumption creating new rights.

26. On a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that: (i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself; (ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time; (iii) The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally; (iv) In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act; (v) Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence; (vi) Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal; (vii) Merits of the case are not required to be considered in condoning the delay; and (viii) Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision.”

7. Recently, in *Shivamma (dead) by LRS vs. Karnataka Housing Board & Ors.*

2025 SCC OnLine SC 1969, it has been held as follows:

“261. Thus, for the reasons aforesaid, the impugned order of the High Court deserves to be set aside. Before we proceed to close this judgment, we deem it appropriate to make it abundantly clear that administrative lethargy and laxity can never stand as a sufficient ground for condonation of delay, and we want to convey an emphatic message to all the High Courts that delays shall not be condoned on frivolous and superficial grounds, until a proper case of sufficient cause is made out, wherein the State-machinery is able to establish that it acted with bona fides and remained vigilant all throughout. Procedure is a handmaid to justice, as is famously said. But courts, and more particularly the constitutional courts, ought not to obviate the procedure for a litigating State agency, who also equally suffer the bars of limitation from pursuing litigations due to its own lackadaisical attitude.

262. The High Courts ought not give a legitimizing effect to such callous attitude of State authorities or its instrumentalities, and should remain extra cautious, if the party seeking condonation of delay is a State-authority. They should not become surrogates for State laxity and lethargy. The constitutional courts ought to be cognizant of the apathy and pangs of a private litigant. Litigants

cannot be placed in situations of perpetual litigations, wherein the fruits of their decrees or favourable orders are frustrated at later stages. We are at pains to reiterate this everlasting trend, and put all the High Courts to notice, not to reopen matters with inordinate delay, until sufficient cause exists, as by doing so the courts only add insult to the injury, more particularly in appeals under Section 100 of the CPC, wherein its jurisdiction is already limited to questions of law.”

8. Admittedly the original proceeding had been initiated as far back as in 2006. The impugned order is dated 2 December 2022 dismissing the application on the ground of abandonment/non-prosecution. It is alleged that the appellant came to learn of this fact only in 2025. Admittedly, there had been a delay of 951 days in the filing of this appeal. The entire story of the appellant having come to learn of the impugned order only in 2025 is implausible and lacking in bonafides. Rules of limitation are based on the principles of sound public policy and convenience. A litigant is bound to shoulder the responsibility of litigation which has been initiated. There is no room for any laxity or lethargy. The delay of 951 days is in no way a minor delay. The conduct of the appellant to say the least is lackadaisical and indolent. The appellant has been unable to show any cause far less sufficient cause. There are no grounds warranting condonation. The appellant has been lethargic and apathetic to say the least and deserves no discretion.
9. In view of the above, the application is dismissed. Consequently, IPDTMA/7/2025 also stands dismissed on the ground of maintainability.

(RAVI KRISHAN KAPUR, J.)