

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.13348 OF 2025

Ganpat s/o Nivruttirao Lagdive,
Age: 88 Years, Occu.: Pensioner,
R/o : Shekapur, Tal. & Dist. Dharashiv.

..Petitioner

VERSUS

1. Ravindra s/o Ganpat Lagdive,
Age : 51 years, Occu. Nil,
R/o. Samarth Nagar, Dharashiv,
Dist. Dharashiv.

2. Dhondubai w/o. Ganpatrao Lagdive,
Age : 84 years, Occu. Household,
R/o. Shekapur, Tal. & Dist. Dharshiv.

..Respondents

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Mr. S.K. Chavan, Advocate for petitioner.
Ms. Mrunal S. Andhare, Advocate for Respondent No.1.

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CORAM : S. G. CHAPALGAONKAR, J.

DATED : MARCH 30, 2026

FINAL ORDER :-

1. Present writ petition takes exception to order dated 07.07.2025 passed by learned Principal District Judge, Osmanabad below Exhibit-1 in Civil M.A. No.15 of 2024, thereby condoning delay of 16 years 9 months and 21 days in filing appeal against judgment and decree dated 04.04.2007 in Special Civil Suit No.43 of 2005.

2. The petitioner herein had instituted Special Civil Suit No. 43 of 2005 before learned Civil Judge Senior Division at Osmanabad for declaration of ownership and perpetual injunction in respect of

suit property. The respondent no.1 was served with suit summons. However, he did not appear inspite of due service of summons. The final suit came to be decreed vide judgment and order dated 04.04.2007. On 25.01.2024, respondent filed appeal before District Judge at Osmanabad along with an application for condonation of delay of 16 years, 9 months and 21 days on the ground that suit summons was not duly served upon him on his proper address and he got knowledge of decree when petitioner executed gift deed in favour of his another son Rajendra. Learned District Judge allowed application and condoned delay subject to payment of cost of Rs.10,000/-.

3. Mr. S.K. Chavan, learned advocate appearing for petitioner submits that except bare statement in application that suit summons was not properly served, there is no other material to show that there was no proper service of suit summons on respondent no.1. Learned District Judge blindly accepted respondents contention and condoned inordinate delay of 16 years, 9 months and 21 days.

4. Per contra, Ms. Mrunal Andhare, learned advocate appearing for respondent no.1 submits that respondent no.1 was residing at Osmanabad, whereas suit summons was issued on address at Village Shekapur. As such, there was no valid service.

5. Perusal of roznama in Special Civil Suit No.43 of 2005 records that suit summons was duly served upon respondent no.1. Mr.

Chavan points out that there is voluminous material indicating that petitioner was residing at Village Shekapur at the relevant time. There was report of bailiff regarding valid service of notice upon respondent no.1 thereupon ex parte order was passed against him on 15.09.2005. Even mutation entries were effected in terms of decree passed in suit in the year 2008. The Aadhar Card of respondent no.1 records his address at Village Shekapur. In the year 2010, he purchased land from one Dattatraya Chavan. On his sale deed, he recorded address at Shekapur. Other sale deeds in name of wife of respondent dated 12.08.2011, 12.09.2012, 21.06.2017 also depict address at Village Shekapur.

6. Having considered submissions advanced by learned advocate appearing for respective parties, this Court finds that respondent no.1 sought to condone delay of more than 16 years in filing appeal giving reason that suit summons was not duly served upon him. Pertinently, original record of suit is destroyed, however, copy of roznama clearly depicts that summons was duly served upon respondent no.1. The judgment in Special Civil Suit No.43 of 2005 records that respondent no.1 failed to cause appearance in suit, inspite of due service of notice, hence, ex parte order was passed against him on 15.09.2005. In wake of aforesaid documentary evidence, it was heavy burden upon petitioner to establish that notice was not duly served upon him. He raised contention in application

that he was in government service and residing at Osmanabad at the relevant time. However, nothing is placed on record in support of this contention. Copy of Aadhar Card and various sale deed referred above depict that his address is consistently shown as resident of Village Shekapur. Pertinently, after passing of decree in suit mutation entries were taken depicting petitioner's name as owner of property. It cannot be believed that since 2005, respondent was not aware about aforesaid record. It is possible that because petitioner gifted this property in favour of another son Rajendra, present application is filed.

7. Learned District Judge merely records that suit summons was not properly served without recording any reasons in support of such findings. Although, it is advisable that liberal approach is taken in matter of condonation of delay, there was no reason to condone delay without there being sufficient cause for same. In result, this Court finds that learned District Judge fell in error of jurisdiction while condoning inordinate delay of 16 years caused in filing appeal.

8. In result, petition is allowed in terms of prayer clause (C).

(S.G. CHAPALGAONKAR, J.)