



**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

SECOND APPEAL NO. 66 OF 2026

Lasina Sudhakar Vattakandi,
Age; 38 years, Occ; Household,
R/o; Sanipeth, Gurunanak Nagar,
Jalgaon, District; Jalgaon.

Through its General Power of Attorney :

Anand Kishor Sonwal,
Age; 40 years, Occ; Service,
R/o; Plot No. 34, Block No. 3 S. No. 185/1,
Navnath Nagar, Savkheda Shivar,
Jalgaon, Dist. Jalgaon.

...APPELLANT
(Orig. Defendant)

VERSUS

1. Mayuri Sudhirkumar Shah,
Age; 54 years, Occ; Household,
R/o; 118, Zilla Peth, Ranjan Building,
Jalgaon, District; Jalgaon.

...(Orig. Plaintiff)

2. Soniya Sudhakar Vattakandi,
Age; 35 years, Occ; Household,
R/o; At Talsheri, Post Movikera,
Tq. Talsheri, Dist. Kannur,
State of Keral.

...RESPONDENTS
(Orig. Resp. No. 2)

...
Advocate for the Appellant : Mr.Yogesh H. Jadhav
Advocate for Respondent No. 1 : Ms. Khushi K. Varma
...

**CORAM : MEHROZ K. PATHAN, J.
DATE : 09.04.2026**

JUDGMENT :

1. The Appellant/Original Defendant has approached this Court in present Second Appeal, challenging the judgment and order passed by the learned District Judge, Jalgaon, in Civil Misc. Application No. 251 of 2017, dated 25.09.2025, whereby, the First Appellate Court has rejected the delay condonation application in filing the appeal, against the judgment and decree passed by the Civil Judge, Senior Division, Jalgaon, in Special Civil Suit No. 257 of 2004, dated 02.07.2007.

2. The facts of the case are that, the plaintiff Sau. Mayuri Shah filed a Special Civil Suit alleging therein that she has executed an agreement to sale with deceased Sudhakaran Vattakandi (the father of the defendants) on a stamp paper of Rs. 20/-, which is at Exhibit – 28, for a consideration of Rs. 3,50,000/-. Thereafter, Rs. 25,000/- cash was paid to the deceased Sudhakaran Vattakandi on the date of agreement and Rs. 30,000/- was deposited in the loan account of the deceased Sudhakaran Gopalan Vattakandi in Mahaveer Arban Co-Operative Credit Society, Ltd., Jalgaon. A receipt of which is at Exh. 34. The deceased Sudhakaran Vattakandi has handed over the possession of the plot bearing No. 15, ad-measuring 463.12 Sq. Mts., to the plaintiff on 15.07.2001, and the sale deed was agreed to be executed between the plaintiff and defendants.

However, unfortunately, the deceased Sudhakaran Vattakandi died on 22.12.2001 and as such, the sale deed could not be executed. The plaintiff thereafter approached defendants, narrated all facts and requested to execute sale deed. The defendants, initially agreed to execute the sale deed but lateron, denied and refused to execute the same. The plaintiff had sent a notice to the defendants on 01.03.2004, through her Advocate to execute the sale deed of plot No. 15. The notices were served on the defendants on 11.03.2004 by RPAD, however, no reply was sent by the defendants, as such, the plaintiff was left with no alternative but to file a Special Civil Suit for specific performance of the "Sauda Pavati" (agreement to sale) Exhibit '28' dated 15.07.2001.

3. The defendants were served with suit summons as per Exhibit 14 dated 28.09.2004, but failed to appear in the suit and as such, the suit proceeded ex-parte against them.

4. The learned trial Court relied upon the evidence adduced by the plaintiff, as well as evidence of Sudhirkumar Natwarlal Shah (Exhibit – 25), Sanjay Ramprasad Jatale (Exhibit – 26) and Bhomaraj Sharma (Exhibit-27) and also relied upon the documents placed on record i.e. agreement to sale (Exhibit - 28), 7/12 extract of Survey No. 331/1 of Plot No. 15 at (Exhibit – 33) which shows the name of

defendants Miss. Lasina and Miss. Soniya as the legal representatives of the deceased Sudhakaran Vattakandi, the notice dated 01.03.2004 (Exhibit – 31) and the suit summons served upon the defendants (Exhibit – 14).

5. The trial Court relied upon the unchallenged testimony of the plaintiff and the documents produced and was thus pleased to decree the suit. The learned trial Court directed the plaintiff to pay the remaining consideration of Rs. 2,95,000/- and also directed the defendants to execute the sale deed and further directed that if the defendants failed to execute the sale deed the same shall be executed through the Court.

6. The defendants have not only failed to appear in the suit, even though served with suit summons but have also failed to file an appeal within limitation for challenging the judgment and decree of the learned trial Court passed in Special Civil Suit No. 257 of 2004, dated 02.07.2007. The appellant after the period of 10 years has filed an application for condonation of delay in filing the appeal, which came to be registered as Civil Misc. Application No. 251 of 2017 before the learned First Appellate Court. The learned First Appellate Court found that the reasons/explanation given for causing delay were not sufficient and as such, rejected the application vide

judgment dated 25.09.2025. The appellant has thus approached this Court challenging both the judgments passed by the learned lower Courts below.

7. After hearing the learned counsel for the appellant as well after going through the judgment dated 25.02.2025, passed by the learned District Judge, Jalgaon in Civil Misc. Application No. 251 of 2017, dismissing the application for condonation of delay of 10 years in filing of the appeal challenging the judgment dated 02.07.2007 passed by the Joint Civil Judge, Junior Division, Jalgaon, the following substantial question of law appears to be involved in the present appeal is as under :

SUBSTANTIAL QUESTION OF LAW :-

“(i) Whether the lower appellate Court has committed gross illegality in rejecting the application for condonation of delay filed by the appellant denying the appellant an opportunity to get his rights adjudicated on merits in violation of the judgment of the Hon’ble Supreme Court in **N. BALAKRISHNAN A v. M. KRISHNAMURTHY - reported in AIR 1998 SUPREME COURT 3222**”.

SUBMISSIONS OF THE APPELLANT :

8. The learned counsel for the appellant Mr. Jadhav submits that while considering the request for condonation of delay, reference to the disputed facts become inevitable and if the facts of

the present case are seen it shows that the defendants resides at District Kannur (State of Kerala), who were not aware of the passing of the decree by the learned trial Court, as such they could not file appeal within time before the First Appellate Court. The order of this Court having been totally ignored by the learned first Appellate Court, the said question of law, therefore, falls for consideration of the Hon'ble Court.

9. The learned counsel for the appellant further submits that the learned first Appellate Court wrongly came to a conclusion that the appellant who was residing at Kerala has suppressed certain facts without even discussing as to what was suppressed, the same therefore, required interference of this Court to adjudicate the rights of the parties on the principle that 'no one shall be condemned unheard'. This Court may, therefore, set aside the order passed by the learned first Appellate Court and remand the matter to the First appellate Court by condoning delay of 10 years with a direction to the First Appellate Court to decide it afresh on merit.

THE SUBMISSIONS OF THE RESPONDENTS :

10. The learned counsel for the respondents submits that there is gross delay of 10 years in filing the appeal. The appellant had knowledge of the suit being decreed by the trial Court. The appellant

had initially filed a Civil Misc. Application No. 336 of 2009, for setting aside the ex-parte order before the learned trial Court. The said application came to be dismissed in default vide order dated 09.02.2015 passed by the learned trial Court. On 13.10.2016, the applicant again moved a Civil M.A. No. 295 of 2015 for setting aside the order of the dismissal in default and to restore the Civil M.A. No. 336 of 2009. The said application again came to be dismissed in default vide order dated 13.12.2016. The present Civil M.A. No. 251 of 2017 was thus filed for condonation of delay of 10 years in filing the appeal before the First Appellate Court. The appeal is thus filed without any sufficient cause and explanation for condonation of delay of 10 years in filing the appeal. The appeal is, therefore, without any substance on merit, and no substantial question of law is involved in the present appeal, hence, the appeal may be rejected.

REASONING :-

11. I have gone through the judgment passed in Special Civil Suit No. 217 of 2004 dated 02.07.2007 by the Civil Judge, Senior Division, Jalgaon, and the judgment of the First Appellant Court dated 25.09.2025, passed in Civil M.A. No. 215 of 2017. The perusal of the record shows that the Special Civil Suit No. 257 of 2004 came to be decreed vide the Judgment and Order dated 02.07.2007. It is specifically observed in the said Judgment that defendant Nos. 1 and

2 i.e. appellant herein was duly served with the suit summons as per Exhibit -14 dated 28.09.2004, however, failed to appear in the suit. The suit, therefore, proceeded ex-parte against the present appellant. The appellant had, therefore, filed a Civil M.A. No.336 of 2009 for setting aside the ex – parte order on 27.10.2009. The said Civil M.A. No. 336 of 2009 also came to be dismissed in default on 09.02.2015. The appellant had again moved Civil M.A. No. 295 of 2015 for setting aside the dismiss in default order dated 09.02.2015 and restoration of Civil M.A. No. 336 of 2009. The same again came to be dismissed on 13.12.2016. The Civil M.A. No. 251 of 2017 thus came to be filed after 9 months to condone the delay for preferring the appeal against the judgment and decree.

12. The appellant has admitted that he has applied for certified copy of the judgment and decree after getting knowledge about the passing of the decree in Special Civil Suit No. 257 of 2004 on dated 18.09.2008 and has received a certified copy on 29.09.2008 and has thus filed the Civil M.A. No. 336 of 2009 for setting aside the orders of ex-parte. The submission of the appellant that he was not having any knowledge about the proceedings as he was residing at Kerala, thus, does not appear to be correct as despite obtaining certified copy of the judgment and decree on 29.09.2008 the appellant has failed to file the appeal within the limitation before the

First Appellate Court. The said Civil M.A. No. 336 of 2009 also came to be dismissed in default vide order dated 09.02.2015 by the trial Court and the application for restoration of the said application came to be filed on 13.10.2015 by filing Civil M.A. No. 295 of 2015. The said application No. 295 of 2015 also came to be dismissed in default on 13.12.2016 and thus the present Civil M.A. No. 251 of 2017 was filed on 15.09.2017 i.e. after almost 10 years of passing of the judgment and decree by the learned trial Court dated 02.07.2007. Thus, I am of the opinion that the appellant was not justified in raising the plea of not having any knowledge about the proceedings. The conduct of the appellant shows that he was hopelessly negligent about the proceedings pending and as such cannot claim to have sufficient or justifiable reasons for condonation of delay. The application for setting aside the ex-parte order was filed in the year 2009, which came to be dismissed in the year 2015. Again, another application for restoration was filed in the year 2015 which came to be dismissed in the year 2016. The present application is for condonation of delay of 10 years in filing the appeal, came to be filed after 10 years on the same ground that the appellant was not having any knowledge about the proceedings and as such the plea of the appellant cannot be entertained. The learned First Appellate Court rightly considered the conduct of the appellant and was found that there is no sufficient cause shown by the appellant to condone the

delay of 10 years for preferring the appeal. The Hon'ble Supreme Court in the recent judgment in the case of **Shivamma (Dead) by L.Rs. Vs. Karnataka Housing Board and others reported in 2025 Live Law (SC) 899**, held that,

"147. The expression "may be admitted" vests in the court a discretion, the exercise of which is preconditioned to the proof of a "sufficient cause" for the failure to file the appeal or application, as the case may be, within the prescribed period of limitation. It enables a court to either admit or reject any appeal or application, for being barred by limitation, even if "sufficient cause" is shown to its satisfaction. The idea behind vesting the courts with such discretion is to ensure that the power to condone any delay in the filing of an appeal or application, as the case may be, is exercised only to advance substantial justice, where no prejudice or injustice would be meted from such delay being condoned. Condonation of delay is not a matter of right but a discretion of the court.

167. Once, the material on record lend support to the view arrived at by the court below, the enquiry of the appellate court into the material on record ends. Thereafter, what remains to be seen is only the exercise of discretion by the court below, which warrants a careful and delicate approach from the appellate court. This is because acceptance of the explanation as a sufficient cause is the result of a positive exercise of discretion and normally the

appellate court should not disturb such exercise of discretion, unless the exercise of discretion was on wholly waterable grounds or arbitrary or perverse.

262. 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”.

13. Thus perusal of the record would show that the appellant has failed to give any sufficient reason for condonation of delay of 10 years in filing the appeal. The Hon'ble Supreme Court in **Shivamma (Dead) by L.Rs. Vs. Karnataka Housing Board and others** (supra) specifically deprecated the practice of the High Courts 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.

14. Thus, the appellant has failed to show sufficient cause for gross inordinate delay in not filing the appeal challenging the ex-parte Judgment to the trial Court.

15. After considering the judgment of the learned trial Court as well as the learned First Appellate Court, the present Second Appeal does not involve aforesaid substantial questions of law as submitted by the learned counsel for the appellant. There is no error or irregularity in the judgment passed by the learned lower Court. No other substantial questions of law arise for consideration in the present Second Appeal. The Second Appeal is, therefore, dismissed with cost.

(MEHROZ K. PATHAN, J.)

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