



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

CIVIL REVISION APPLICATION NO. 245 OF 2025

Fakirshah Mehboob Shah .. Applicant

Versus

Istiyakshah Razzak Shah and another .. Respondents

Shri Ramesh R. Imale, Advocate for the Applicant.
The Respondent Nos. 1 and 2 are served.

CORAM : SHAILESH P. BRAHME, J.
DATE : 27TH JANUARY, 2026.

FINAL ORDER :

. Heard learned counsel Mr. Imale for the applicant. None appears for the respondents though notice for final disposal was served upon them. It was indicated vide order dated 02.12.2025 that matter shall be decided finally at the admission stage.

2. Revision application is directed against the order of condonation of delay of four years eleven month and twenty eight days caused in filing application for setting aside order of dismissal of appeal in default. Applicant is the original plaintiff, who had preferred R.C.S. No. 97 of 2005 for specific performance of contract founded on agreement dated 06.06.2003 proposing to purchase 80R land for consideration of Rs. 40,000/-. An earnest amount of Rs. 10,000/- was paid and possession was also handed over to the applicant. The respondents appeared in the suit and

contested the same by leading evidence.

3. The Trial Court decreed the suit on 08.08.2011. Being aggrieved, the respondents preferred R.C.A. No. 13 of 2015. Appeal was dismissed for default on 12.07.2019. On 14.08.2024 application for restoration and application for condonation of delay was preferred by the respondents before the lower Appellate Court. Applicant contested the application bearing Civil Misc. Application No. 109 of 2024. By the impugned order delay was condoned by imposing cost of Rs. 10,000/- upon the respondents.

4. Learned counsel Mr. Imale would submit that condonation of delay is an error apparent on the face of record because no steps were taken from 12.07.2019 till March 2020. The lock-down for pandemic of Covid 19 started thereafter. He would submit that there is nothing on record to show that there was communication gap between the lawyer and the respondents. It is further submitted that there is oblique motive in presenting application at belated stage. The applicant had deposited balance amount of consideration before the Executing Court and the execution was on the verge of conclusion. It is submitted that agreement was executed in the year 2003 and for last twenty three years applicant is striving for sale deed.

5. I have gone through the paper book, impugned order and the relevant papers. R.C.S. No. 97 of 2005 was decreed on

08.08.2011. R. D. No. 18 of 2011 has been preferred by the applicant for getting sale deed executed. There is no reason to doubt the statement that balance amount was deposited by the applicant before the Executing Court and only sale deed remained to be executed.

6. The reason assigned by the respondents is absurd showing the pandemic situation in the country. Judicial notice can be taken that lock down for pandemic of Covid 19 commenced on or about 23rd March, 2020. Appeal was dismissed in default on 12.07.2019. From that date till 14.08.2024 no steps were taken by the respondents. The respondents are guilty of lapses.

7. There is no material on record to indicate that really there was any lack of communication between the lawyer and the respondents. No action appears to have been taken by the respondents against the lawyer for not communicating the dates in appeal. Otherwise also it is duty of the client to be in touch with the lawyer. No specific reasons are assigned explaining the delay, which is inordinate.

8. The respondents are prolonging the matter and protracting the execution. The applicant has deposited balance amount before the Executing Court and only sale deed is to be executed, when the respondents rushed to the Appellate Court by filing application for restoration. The application lacks bonafides. This Court cannot be oblivious of the fact that agreement was

executed in the year 2003 and applicant is waiting for the sale deed for last twenty three years. I find that impugned order is unsustainable.

9. The approach of the learned Judge is over sympathetic. Applicant is already in possession of the suit land. It is not a case which warrants liberal approach. The impugned order is perverse. I, therefore, pass following order.

O R D E R

- A. The civil revision application is allowed.
- B. Impugned order dated 04.09.2024 passed by the lower Appellate Court in Civil Misc. Application No. 109 of 2024 is quashed and set aside.
- C. Needless to mention that R.C.A. No. 13 of 2015 shall stand dismissed.

[SHAILESH P. BRAHME J.]

bsb/Jan. 26