



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 21 OF 2026

Bhausahab Manjabapu Pawar And Ors
VERSUS
Subhadrabai Dilip Shinde Died
Through Lrs Dilip Khandu Shinde And Ors

...

- Mr. Nandkishor Chandrakant Garud, Advocate for Appellant

...

WITH
CIVIL APPLICATION NO. 1788 OF 2026
IN SA/21/2026

...

CORAM : MEHROZ K. PATHAN, J.

RESERVED ON : 11.02.2026

PRONOUNCED ON : 23.02.2026

ORDER :

1. The appellants have filed the present appeal being aggrieved by the order dated 06.12.2024, passed by the learned District and Sessions Judge-2, Shrigonda, thereby rejecting Miscellaneous Civil Delay Application No. 25 of 2021 filed by the appellant – Bhausahab Manjabapu Pawar for condonation of delay of 793 days in filing the appeal against the judgment and decree dated 14.01.2019, passed in R.C.S. No. 140 of 2016 by the learned Joint Civil Judge, Junior Division, Karjat, District Ahilyanagar. The appellant has approached

this Court by filing the present Second Appeal. At the outset, learned counsel for the appellant submits that though several substantial questions of law are raised in the present appeal, the only substantial question of law that arises for consideration is as under :-

“a) whether the First Appellate Court was right in rejecting the application for condonation of delay on the ground of insufficient cause instead of deciding and adjudicating the rights of the parties on merits by condoning the delay?”

2. Learned counsel for the appellant, Mr. Garud, submits that a sufficient explanation has been given in the application for condonation of delay filed by the appellant herein. It is stated that the ex parte decree came to be passed on 14.01.2019. The appeal ought to have been filed within a period of 60 days, i.e., on or before 12.03.2019. However, the applicant failed to file the appeal within the stipulated period of time, resulting in a delay of about 2 years and 5 months. The applicants further submit that the notice/summons of the suit was not properly served upon the present applicant. Hence, the applicant could not remain present, and the decree was passed ex parte on 14.01.2019. The applicants are related persons and have no specific knowledge of law or court proceedings. It is further stated that a measurement notice was served upon the applicant on 15.03.2021, and during that time there was a lockdown due to the COVID-19 pandemic. The applicants did not receive a

certified copy of the judgment and decree and failed to contact their advocate for filing an appeal. As such, there is a delay of about 2 years and 5 months in filing the present appeal. Hence, the same ought to have been condoned by the First Appellate Court. However, the learned First Appellate Court, without properly considering the matter, rejected the Miscellaneous Civil Application.

3. Learned counsel for the applicant, therefore, submits that the Court has to adopt a liberal approach while deciding the application for condonation of delay and, as such, the learned Trial Court ought to have allowed the Miscellaneous Civil Application, thereby permitting the appellants to adjudicate their rights by participating in the proceedings. It is further submitted that the Appellate Court should have decided the rights of the plaintiff and the defendants by giving an opportunity of hearing to the appellants/defendants who are suffering an ex parte decree passed by the learned Trial Court. Learned counsel for the appellant relies upon the judgment of the Hon'ble Supreme Court in ***Collector, Land Acquisition, Anantnag & Anr. v. Mst. Katiji & Ors.***, AIR 1987 SC 1353, to submit that the Courts should adopt a liberal approach while considering applications for condonation of delay. The theory that every day's delay must be explained does not mean that a pedantic approach should be adopted, and the doctrine that every day's delay must be explained

must be applied in a rational, common-sense, and pragmatic manner. Learned counsel further submits that when substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, and the other side cannot claim to have a vested right in injustice being done because of a non-deliberate delay.

4. I have considered the judgment passed by the learned Trial Court, wherein the learned Trial Court decreed the suit ex parte. A perusal of the judgment dated 14.01.2019 shows that all defendant Nos. 1 to 22, who were family members of the plaintiff's ancestors, along with defendant No. 2 – Sarpanch, Gram Panchayat Ruigavan, were served with summons of the suit. However, they failed to appear before the Trial Court, and as such, the trial proceeded ex parte against the appellants – Bhausahab, Chagan, Tatyaram, and the other defendants, who are shown as respondents in the present appeal. A perusal of the decree passed by the Trial Court shows that the suit was filed in the year 2016 and was registered as R.C.S. No. 140 of 2016. Defendants Baban, Bhujang, and Bhausahab were the real brothers of the plaintiff – Subhadrabai, and defendant No. 13 – Chaturabai was the real sister of the plaintiff. Manjabapu was their father and Tuljabai was their mother. Thus, the plaintiff claimed partition in the ancestral property by filing the suit for partition and

separate possession. The said suit came to be decreed by the judgment and decree dated 14.01.2019, and none of defendant Nos. 1 to 22, who were parties to the said suit, filed their appearance or written statements opposing the claim. The said decree was thereafter sought to be executed by initiating execution proceedings.

5. The appellants herein did not file an appeal challenging the judgment and decree dated 14.01.2019 within the period of limitation. After about two years and five months from the passing of the said decree, the appellants filed an application for condonation of delay of 2 years and 5 months. The learned First Appellate Court, vide judgment dated 06.12.2024, was pleased to reject the said application.

6. A perusal of the judgment passed by the First Appellate Court shows that it applied its mind to the reasons given in the application. The application states that summons of the suit were not properly served upon the appellants and that a measurement notice was received by the applicants on 15.03.2021, during which period the lockdown had commenced. The judgment of the First Appellate Court further shows that the appellants did not enter the witness box to lead any evidence regarding the cause of delay as claimed by them and did not subject themselves to cross-examination on behalf of the decree holders, i.e., the plaintiff.

7. Thus, having failed to respond to the summons of the suit, the appellants suffered an ex parte decree. Even after the judgment and decree dated 14.01.2019, the appellants did not file an appeal within limitation and filed the application for condonation of delay along with the appeal only after 2 years and 5 months. They again failed to enter the witness box to establish their claim regarding the cause of delay and failed to grant an opportunity to the plaintiff to cross-examine them. The same amounts to deliberate negligence on the part of the appellants. The learned First Appellate Court, therefore, rejected the appeal, holding that the applicants failed to prove that they were prevented by sufficient cause from filing the appeal within the prescribed period of limitation.

8. The learned First Appellate Court has rightly considered the judgment relied upon by the present applicants in ***Collector, Land Acquisition, Anantnag (supra)*** to hold that it is not necessary that every day's delay must be explained. However, taking into consideration the failure of the applicants to lead any evidence in support of their contentions in the application for condonation of delay, the Court found that sufficient cause was not established.

9. The learned First Appellate Court has further considered that the judgment and decree was passed on 14.01.2019, i.e., more than one year before the COVID-19 pandemic began in March 2020. The

appeal came to be filed on 29.06.2021. The reasons assigned by the appellants do not constitute sufficient cause to condone the delay. It has been held that once a party has lost the right to have the matter considered on merits because of its own inaction in law, such delay cannot be presumed to be non-deliberate, and the party cannot plead that substantial justice deserves to be preferred over technical considerations.

10. It is no doubt true that when substantial justice and technical considerations are pitted against each other, the cause of substantial justice has to be given preference over technical considerations relating to non-deliberate delay in filing appeals. However, considering the conduct of the appellants, who failed to appear before the Trial Court from the year 2016 despite being served with summons till the passing of the decree in the year 2019, and thereafter failed to file an appeal for a period of 2 years and 5 months, and further failed to lead evidence before the First Appellate Court, thereby depriving the plaintiffs the opportunity to cross-examine them on the cause of delay, this Court does not find any ground to interfere in the present Second Appeal. The learned First Appellate Court has not committed any error apparent on the face of the record which would warrant interference on any other substantial question of law.

11. Hon'ble Apex Court in the case of ***Shivamma (Dead) by L.Rs. Vs. Karnataka Housing Board and others*** reported in ***2025 LiveLaw (SC) 899***, was pleased to hold as under :-

“147. The expression “may be admitted” vests in the court a discretion, the exercise of which is pre-conditioned 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.”

12. Thus, taking into consideration the principles laid down by the Hon’ble Supreme Court that though a liberal approach may be adopted while considering applications for condonation of delay, the same cannot be extended to cases of gross, inordinate and unexplained delay where no sufficient cause is made out, particularly in appeals under Section 100 of the Code of Civil Procedure, it is evident that the present appeal arises only from the rejection of the application for condonation of delay of 2 years and 5 months by the First Appellate Court. For the reasons stated hereinabove, no error or perversity is found in the impugned judgment passed by the learned First Appellate Court.

13. The only substantial question of law that arose for consideration, whether the First Appellate Court was justified in rejecting the application for condonation of delay on the ground of absence of sufficient cause instead of adjudicating the rights of the parties on merits by condoning the delay? Is, therefore, answered in the negative.

14. Since no other substantial question of law arises for consideration in the present Second Appeal, the appeal is devoid of substance and merit and is accordingly dismissed.

15. Pending Civil Applications, if any, also stands disposed of.

(MEHROZ K. PATHAN, J.)

16. At this stage, the learned counsel for the appellants, Mr. Garud submits that the Circle Officer, Walwad, Taluka Karjat, District Ahilyanagar has issued a notice to all the appellants as well as the other defendants in the suit for remaining present for handing over possession in view of the measurement/partition table prepared and approved by the office on 21.1.2026, thereby directing the parties to remain present on 24.2.2026 at 11.00 a.m. without fail. The said notice dated 9.2.2026 is taken on record and marked "X" for the purpose of identification. The learned counsel for the appellants therefore submits that the possession of the appellants may be protected for a period of four weeks so as to enable the appellants to take appropriate steps to challenge the present judgment and order.

17. Taking into consideration the said notice dated 09.02.2026, parties are directed to maintain status-quo for a period of four weeks from today. After the expiry of said period, the interim order of

status-quo shall expire.

18. Parties to act upon authenticated copy of this order.

(MEHROZ K. PATHAN, J.)