



IN THE HIGH COURT OF BOMBAY AT GOA

**MISC.CIVIL APPLICATION NO.68 OF 2026
IN
FIRST APPEAL NO.6 OF 2026**

RAJITA RAVINDRA DESSAI AND 3 ORS ... APPLICANTS

Versus

**RATNAPRABHA ALIAS PRABHAVATI NAIK
DESSAI (SINCE DECEASED THR LRS ... RESPONDENTS**

Mr. Anant Dabholkar with Ms. Kedilaya Nandini Balakrishna,
Advocates for the Applicants.

CORAM:- VALMIKI MENEZES, J.

DATED :- 6th February, 2026

P.C.:

1. This application, for condoning eight years and seven months of delay, in filing the Second Appeal against the Judgment and Decree dated 01.04.2017 passed by the Ad-hoc, District Judge-2, South Goa at Margao in Regular Civil Appeal No. 55/2025, which has upheld the Judgment and Decree dated 29.06.2015 passed by the Civil Judge Junior Division 'E' Court in Regular Civil Suit No. 32/2008/E; by the impugned Decrees, the Civil Court and the District Court have confirmed the Decree of demolition of the suit structure.

2. Though the application for condonation of delay refers to delay in

filing a First Appeal No. 342/2026(F), that Appeal has been wrongly registered as a First Appeal, since it is an Appeal against an Appellate Decree and ought to be registered as a Second Appeal. The Registry is directed to re-register First Appeal No.342/2026(F) as a Second Appeal. I have proceeded to decide the application for condonation of delay by considering First Appeal No. 342/2026(F), to be the Second Appeal and have accordingly considered the ground raised in that Appeal, to determine whether, infact a substantial question of law would arise for determination.

3. On examining the Decrees passed by the Civil Court and the District Court, I find that there is no substantial question that arises for determination under Section 100 of the CPC. The suit, as filed by the Plaintiffs, was lodged on the premise that the Plaintiffs and Defendants were co-owners of the suit property bearing Survey No. 619/28 of village Cuncolim. The Plaintiffs alleged that the Defendants constructed an illegal structure in the suit property. The defence taken by the present Appellant in the Written Statement was that construction was carried out after obtaining consent and No Objection Certificate dated 08.07.1988, from the Plaintiff to re-construct the original structure standing on the suit property, which the Defendants claim has been existing since time immemorial.

4. After issues were framed, the suit went to trial. The Plaintiffs produced several documents in evidence and stated that the structure had been constructed in the suit property without obtaining their consent. The Defendants have also led evidence, but have not

produced any documentary evidence to substantiate the construction or written consent of the Plaintiffs, which has been pleaded in the written statement. The Trial Court upon considering this evidence, has arrived at a categorical finding that the suit structure was illegal, without any permission and without any consent of the Plaintiffs and accordingly, granted a Decree of mandatory injunction to demolish the structure raised by the Defendants in the suit property; it has also granted a Decree of permanent injunction to restrain the Defendants from doing any further construction in the suit property.

5. This Judgment and Decree came to be assailed before the District Court in Regular Civil Appeal No. 55/2015 filed on 29.07.2015, which came to be dismissed on 01.04.2017; on re-appreciation of the evidence, the Appellate Court has confirmed all factual findings on the existence of a structure constructed by the Defendants without consent of the Plaintiffs. In other words, there are concurrent findings of fact arrived at by the Civil Court and the District Court. No infirmity can be found with these findings, much less to entertain a Second Appeal under Section 100, where no substantial question of law arises for determination.

6. Coming to the application for condonation of delay, the star ground raised in the application is that some of the Applicants/original Defendants have been suffering from various ailments, which include cancer. Certain medical certificates have been produced on record to claim that the Applicants were not in a position to lodge a Second Appeal before this Court within the period of limitation, i.e. within

90 days of 01.04.2017, when the District Court dismissed their First Appeal.

7. Another fact that needs to be taken note of is that the original Plaintiffs filed an Execution Proceeding bearing No. 33/2018/E before the Civil Judge Junior Division 'E' Court at Margao, seeking demolition of the suit structure. This proceeding has been contested right from the year 2018 till date by the Defendants, who have been appearing in that proceeding for around eight years

8. Perusing the application for condonation of delay for more than eight years for filing this Second Appeal, I find there is no single averment made in the application to justify why the Applicants/Judgment Debtors before the Executing Court have contested the Execution Proceedings, despite all their ailments for the past eight years, but did not find it appropriate to file a Second Appeal to contest the Decree passed by the District Court. Even if they were found to be suffering from ailments, that they claim they have, these ailments from the perusal of the documents produced before me are all relatable to this period, during which the Execution Proceeding was pending.

9. Considering this fact, and that no explanation has been offered as to why the Execution Proceeding was contested but no Appeal was filed, no case has been made out for condoning the delay. It is now well settled by the Hon'ble Supreme Court that once a right is created in favour of the opposite party, where the remedy has been barred of

limitation, there must be sufficient cause shown for taking away that right. Reference may be made to *Shivamma (Dead) By Lrs V/S Karnataka Housing Board & Ors*¹. In the present case, the Decree of the Appellate Court was passed way back in the year 2017, when absolutely no explanation was offered as to how no steps were taken to file a Second Appeal.

10. This apart, on examining the Memo of Appeal and the proceedings before the Trial Court as also before the Appellant Court, absolutely, no case has been made out to admit this Appeal on a substantial question of law.

11. Considering all these facts, the application for condonation of delay is dismissed. No case has been made out for condoning the delay or entertaining this Second Appeal. Hence Second Appeal is also dismissed. No order as to costs.

VALMIKI MENEZES, J.

¹ 2025 SSC Online SC 1969