

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 18285 OF 2024

Praveen Sadashiv Kamble

..Petitioner

Versus

Narhari Rambhau Dumbare
(since decd. through LR's) & ors.

...Respondents

Mr. Shailendra Kanetkar, for the Petitioner.

Mr. A C Bhadang, AGP for the Respondent - State.

CORAM : N. J. JAMADAR, J.

DATE : 16th APRIL 2026

Oral Order :

1. Heard the learned Counsel for the parties.
2. The challenge in this petition is to an order dated 09th August, 2024 passed by the learned District Judge, Khed, Rajgurunagar, Pune in Miscellaneous Civil Appeal No. 35/2024, whereby the appeal preferred by the petitioner against an order dated 03rd December, 2015 passed by the learned Civil Judge, Pune, thereby rejecting an application for condonation of delay of six years, two months and 20 days in seeking the setting aside of an order dated 19th April, 2007 in Suit No. 1344/2003 of dismissal of the suit for want of prosecution, came to be dismissed by affirming the order passed by the trial Court.

3. The petitioner/plaintiff had instituted the suit in the year, 2003, seeking a declaration that the instrument dated 24th June, 1988 executed in favour of Defendant No. 2 was fraudulent and obtained by impersonating the petitioner and, was thus null and void, and for consequential reliefs. As the petitioner did not appear before the trial Court on successive dates, the suit came to be dismissed for want of prosecution, on 19th April, 2007.

4. The petitioner preferred an application to set aside the said order of dismissal of the suit and to restore the suit to file along with an application for condonation of delay of six years, two months and 20 days in filing the said application. It was *inter alia* contended that, the petitioner was a bus driver. He had met with a major accident and was advised to take bed rest. The petitioner's father was also suffering from Paraplegia. Thus, the petitioner was required to attend to his then ailing father. Therefore, the petitioner could not appear before the Court or approach his advocate for seeking the setting aside of the order of dismissal of the suit.

5. The application was resisted by the private respondents.

6. By a judgment and order dated 03rd December, 2025, the learned Civil Judge was persuaded to reject the application

recording *inter alia* that, the petitioner failed to ascribe a sufficient cause for the condonation of delay. The reasons assigned by the petitioner were not borne out by the material on record. In contrast, the attendant circumstances indicated that, those reasons were not genuine and bonafide.

7. Being aggrieved, the petitioner preferred an appeal before the District Court at Khed, Rajgurunagar, Pune.

8. By the impugned order, the learned District Judge dismissed the appeal, concurring with the view of the trial Court.

9. Being further aggrieved, the petitioner has invoked the writ jurisdiction.

10. Mr. Kanetkar, the learned Counsel for the petitioner, submitted that, the Courts below have approached the matter of condonation of delay from an incorrect perspective. It was submitted that, instead of examining the sufficiency of the cause ascribed by the petitioner for not filing the application for setting aside the dismissal order, the Courts below were swayed by irrelevant factors like, the brother of the petitioner had instituted another suit and the sister of the petitioner was a practicing advocate. It was further urged that, the Courts below, especially the trial Court, were prejudiced by the aforesaid

factors and the application for condonation of delay came to be rejected by giving weight to irrelevant considerations.

11. This Court has perused the reasons ascribed in the application for condonation of delay. From a perusal thereof, two reasons can, at best, be discerned. First, the petitioner had met with a major accident and was bedridden. Second, the father of the petitioner was suffering from Paraplegia and, therefore, the petitioner was required to attend to his father. The period when the petitioner met with the accident, the period for which the petitioner was bedridden and the time when the petitioner regained the fitness to attend to his father, were conspicuous by their absence.

12. Implicit in the second reason that, the petitioner could not file the application as he was required to attend to his ailing father is an admission that the petitioner was in a fit state to attend to his ailing father. Thus, *de hors* the attendant circumstances, on the core of the reasons ascribed by the petitioner, the Courts below have found that, the petitioner failed to substantiate those reasons by placing on record cogent material.

13. Undoubtedly, an application for condonation of delay receives liberal consideration. Ordinarily, the courts lean in

favour of the condonation of delay so as to advance the cause of substantive justice. The determination of the lis on merits rather than on technicalities advances the cause of substantive justice, and that is the overarching principle that informs the determination of an application for condonation of delay. However, where the delay is inordinate, like the case at hand, the person seeking condonation of delay is required to satisfy the court that he was prevented by a sufficient cause. Delay cannot be condoned as an act of generosity, and in the absence of material to show that, the reasons ascribed are genuine and bonafide, the application for condonation of huge delay cannot be allowed on the ground that it would promote the cause of substantive justice.

14. A profitable reference in this context can be made to a recent judgment to the Supreme Court in the case of *Thirunagalingam v. Lingeswaran*¹. The Supreme Court has cautioned against condonation of huge delay as an act of generosity. The observations in paragraphs 31 and 32 read as under:-

“31. It is a well-settled law that while considering the plea for condonation of delay, the first and foremost duty of the court is to first ascertain the

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bona fides of the explanation offered by the party seeking condonation rather than starting with the merits of the main matter. Only when sufficient cause or reasons given for the delay by the litigant and the opposition of the other side is equally balanced or stand on equal footing, the court may consider the merits of the main matter for the purpose of condoning the delay.

32. Further, this Court has repeatedly emphasised in several cases that delay should not be condoned merely as an act of generosity. The pursuit of substantial justice must not come at the cost of causing prejudice to the opposing party. In the present case, the respondents/defendants have failed to demonstrate reasonable grounds of delay in pursuing the matter, and this crucial requirement for condoning the delay remains unmet.”

(emphasis supplied)

15. In the case of *H. Guruswamy & ors. Vs. A. Krishnaiah since deceased by LR(s)*², the Supreme Court again emphasized that the concepts of, “liberal approach”, and “substantial justice” should not be employed to frustrate the law of limitation. It was enunciated that the length of the delay is definitely a relevant matter which the Court must take into consideration while deciding whether the delay should be

condoned or not. The observations of the Supreme Court in paragraphs 13 to 17 are instructive and hence, extracted below:

“13. We are at our wits end to understand why the High Court overlooked all the aforesaid aspects. What was the good reason for the High Court to ignore all this? Time and again, the Supreme Court has reminded the District judiciary as well the High courts that the concepts such as “liberal approach”, “Justice oriented approach”, “substantial justice” should not be employed to frustrate or jettison the substantial law of limitation.

14. We are constrained to observe that the High Court has exhibited complete absence of judicial conscience and restraints, which a judge is expected to maintain while adjudicating a lis between the parties.

15. The rules of limitation are not meant to destroy the rights of parties. They are meant to see that the parties do not resort to dilatory tactics but seek their remedy promptly.

16. The length of the delay is definitely a relevant matter which the court must take into consideration while considering whether the delay should be condoned or not. From the tenor of the approach of the respondents herein, it appears that they want to fix their own period of limitation for the purpose of instituting the proceedings for which law has prescribed a period of limitation. Once it is held that a party has lost his right to have the matter considered on merits because of

his own inaction for a long, it cannot be presumed to be non- deliberate delay and in such circumstances of the case, he cannot be heard to plead that the substantial justice deserves to be preferred as against the technical considerations. While considering the plea for condonation of delay, the court must not start with the merits of the main matter. The court owes a duty to first ascertain the bona fides of the explanation offered by the party seeking condonation. It is only if the sufficient cause assigned by the litigant and the opposition of the other side is equally balanced that the court may bring into aid the merits of the matter for the purpose of condoning the delay.

17. We are of the view that the question of limitation is not merely a technical consideration. The rules of limitation are based on the principles of sound public policy and principles of equity. No court should keep the 'Sword of Damocles' hanging over the head of a litigant for an indefinite period of time."

(emphasis supplied)

16. Applying the aforesaid principles to the facts of the case at hand, this Court does not find any legal infirmity in the exercise of discretion by the Courts below. The petition thus does not deserve to be entertained.

17. The Writ Petition stands dismissed.

[N. J. JAMADAR, J.]