IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 61 OF 2026

Fehmina Ishratulla Salmani ...Appellant

Versus

Ishratulla Salmani ...Respondent

WITH

INTERIM APPLICATION NO. 767 OF 2026

Ms. Aditi Athavale, (Appointed through Legal Aid) for the Appellant.

SANTOSH SUBHASH KULKARNI

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Date: 2026.02.13 20:05:19 +0530

CORAM: N. J. JAMADAR, J.

DATED: 4th FEBRUARY, 2026

Order:-

1. This second appeal is directed against an order dated 22nd July, 2025, passed by the learned Principal District Judge, Thane, whereby an application preferred by the appellant – original plaintiff for condonation of 834 days delay in preferring the appeal against a judgment and decree dated 6th August, 2022 passed in RCS/99/2013, came to be dismissed.

2. The appellant had instituted the said suit seeking a declaration that she being the second wife of the respondent – defendant, the respondent and his first wife had no legal right to drive out the plaintiff from the suit property and, to restrain the

respondent and his first wife from entering into the suit premises.

3. The suit was dismissed by the trial Court holding, *inter alia,* that the plaintiff failed to prove that she was in lawful possession of the suit property and the defendant was trying to disturb her possession. The suit was also declared to be bad for non-joinder of necessary party i.e. first wife of the defendant and, eventually, the trial Court held that the plaintiff was not entitled to declaration and injunction.

4. The learned Principal District Judge declined to condone the delay as no cause was ascribed for the delay except an assertion that the certified copy of the decree was not furnished to the plaintiff.

5. I have perused the averments in the application for condonation of delay of 834 days. The application singularly fails to ascribe a cause on account of which the appellant could not prefer the appeal within the statutory period of limitation. The averments in the application primarily pertain the merits of the matter. Only in paragraph 17 of the application, it was averred that, though the certified copy of the judgment was received on 8th August, 2022, certified copy of the decree was not delivered and, hence, there was no delay.

6. In the aforesaid backdrop the learned Principal District Judge was fully justified in observing that absolutely no cause was ascribed for the delay.

7. The delay cannot be said to be short one, by any standard. Moreover, no cause much less, a sufficient one, has been assigned to account for the delay. In these circumstances, the delay cannot be condoned as a matter of course.

8. 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 *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.
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> 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."
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> (emphasis supplied)

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1 2025 INSC 672.

9. In the case of ***H. Guruswamy and others vs. A. Krishnaiah since deceased by LR(s)***[2]***,*** the Supreme Court again emphasised 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 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.
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> 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.
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> 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.
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> 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

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2 2025 SCC Online SC 54.

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)

10. As the learned Counsel for the appellant submitted that, the appellant has no means to prosecute the appeal, and the learned Counsel has been appointed to espouse the cause of the appellant, this Court has examined the merits of the matter, to satisfy the conscience of the Court. The trial Court has explicitly noted that contrary to the pleading and evidence, a case was sought to be established that, the plaintiff was the first wife of the defendant and that the suit property stands in the name of the Smt. Fehmida, the first wife of the defendant, who was not impleaded as a party defendant to the suit. Thus, the Court finds that no substantial prejudice would be caused to the plaintiff if the huge delay of 834 days in preferring the appeal is not condoned.

11. Resultantly, the second appeal stands dismissed.

12. In view of the dismissal of the second appeal, IA/767/2026 also stands disposed.

[N. J. JAMADAR, J.]