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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL(ST) NO. 28452 OF 2024
WITH
INTERIM APPLICATION NO. 11316 OF 2025
WITH
INTERIM APPLICATION NO. 13517 OF 2024
WITH
INTERIM APPLICATION NO. 13518 OF 2024**

Rajeev Girdharlal Pittie ... Appellant/Applicant

vs.

Sky Lounge Estates Private Limited ... Respondent

Mr Anshul Rawat a/w. Mr. Anshuman R. Asare for the Appellant.

Mr. Tejesh Dande a/w. Mr. Sarvesh Deshpande a/w. Mr. Pratik Sabrad a/w. Bharat Gadhvi, Aniket Shitole, Tanishka Chavan, Parth Talekar for Respondent.

CORAM : GAURI GODSE, J.

DATED : 8th APRIL 2026

ORDER:

INTERIM APPLICATION NO. 13517 OF 2024

1. This application is for the condonation of the delay of 841 days in filing the second appeal. This second appeal is filed by the original defendant nos. 4, 5 and 6. The suit was filed by respondent

no. 1 seeking specific performance of the agreement dated 3rd May 2006, executed by defendant no. 1, i.e., Keshav Property Developers, a partnership firm, as the promoter and the plaintiff as the purchaser. The agreement was executed in respect of six flats. In the trial court, the partnership firm was added as defendant no.1, represented through defendant no.2 as one of the authorised partners of the partnership firm. Defendant No.3 is the wife of Defendant No. 2. Defendant Nos. 4, 5 and 6, i.e. the present appellants, are sons of defendant nos. 2 and 3.

2. In the suit, defendant nos. 1 to 3, i.e. the partnership firm, the father and mother had filed a written statement. The trial court has recorded that defendant no. 4 to 6, i.e. the present appellants, fail to file the written statement. Hence, "No Written Statement" order was passed below Exhibit-1. The trial court decreed the suit on 18th January 2016 and granted specific performance in respect of Flat Nos. 401, 402 and 501 out of six flats mentioned in the suit agreement.

3. The trial court's decree was challenged by defendant nos. 1, 2 and 3, and the present appellants were made respondents. The plaintiff had also filed a separate appeal challenging the decree to the extent that it did not grant relief in respect of the remaining three

flats. Both the appeals were decided by a common judgment. The appeal filed by defendant nos. 1 to 3 was dismissed, and the plaintiff's appeal is partly allowed, and specific performance is granted in respect of the 4th flat, i.e. 502, in addition to flat nos. 401, 402 and 501. The decree of the first appellate court is dated 14th March 2022. The decree is not challenged on behalf of defendant nos. 1 to 3. This appeal is preferred by defendant nos. 4, 5 and 6, who are sons of the original defendant nos. 2 and 3.

4. Learned counsel for the applicants submits that the appellants were unaware of the pendency of the suit and the appeals, and they were for the first time made aware of the decree at the time of execution only on 31st August 2024. Thereafter, the applicants gathered information and took steps to file the Second Appeal. He submits that defendant no. 2 expired on 25th January 2019, during the pendency of the first appeal. Defendant No. 2, i.e. the mother, expired on 25th May 2024, after the appeals were decided by the first appellate court. He thus submits that the applicants were only made aware of the decree during the execution proceedings. He submits that since defendant nos. 2 and 3, i.e. parents, were unwell and had to undergo various medical issues, the applicants were unable to take steps to file the second appeal within the time.

5. Learned counsel for the applicants also relies upon the additional affidavit filed on behalf of the applicants to support his submissions that the applicants were unaware of the proceedings. He therefore submits that the delay is unintentional and has occurred only because the applicants were unaware of the proceedings. Immediately, after they were made aware of the decree, steps were taken to file this second appeal. He further submits that there is merit in the second appeal, as the issue involved concerns the interpretation of clause 3.3 of the suit agreement. He submits that, since payments were not made, the plaintiff was not entitled to specific performance of the contract for all the flats. He therefore submits that the delay be condoned and the appeal be heard on the merits.

6. Learned counsel for respondent no.1, original plaintiff, opposes the application. He submits that it is unbelievable that the applicants were unaware of the pending proceedings. The trial court's judgment clearly records that the advocate had appeared for all the defendants, including the present applicants. He points out the reasons stated in the application and submits that even after the date of knowledge, immediate steps have not been taken to file the appeal within the limitation. Since no sufficient grounds have been

stated in the application, the delay of more than two and a half years cannot be condoned.

7. I have perused the papers of the application and the second appeal compilation. In the trial court's judgment, the appearance of the advocate is recorded on behalf of the present applicants. In paragraph no. 6 of the judgment, the trial court records that the order of No Written Statement was passed below Exhibit 1 against the applicants. Even in the appeal, these applicants were made party respondents. In the application for condonation of delay and in the additional affidavit, no categorical statement is made that the applicants were never served with the suit summons. No grievance is raised against the findings recorded by the trial court that No Written Statement order was passed against the applicants, and the appearance shown on their behalf in the trial court. The application is bereft of any explanation on the findings in the trial court's judgment of the No Written Statement order against the applicants, and an appearance on their behalf recorded in the judgment.

8. The only statement made in the application and the additional affidavit is that the applicants have been completely exposed to the pending case, i.e., the "execution petition," on 31st August 2024. Thus, even the statement in the application and the additional

affidavit does not reveal any specific averment that they were unaware of the pendency of the suit and the first appeal. Getting exposed to the pending case, i.e., execution petition as stated in paragraph no.2 of the application, would not mean that they were unaware of the pendency of the proceedings and the decree passed by the trial court and confirmed by the first appellate court. The applicants make a vague statement regarding they being exposed to the petition. The reasons regarding the illness of defendant nos. 2 and 3 are irrelevant for deciding the application for condonation of delay in filing the second appeal on behalf of the applicants, i.e. defendant nos. 2, 3 and 4.

9. The trial court's judgment was also never challenged by the applicants. Thus, in the absence of any satisfactory and justifiable reason, the delay of more than two and a half years cannot be condoned.

10. It is necessary to record the conduct on the part of the applicants in securing the interim relief in respect of the execution of the decree. On 7th October 2024, a statement was made on behalf of the applicants that the applicants would press the second appeal only in respect of Flat No. 502 as added by the first appellate court, while confirming the trial court's decree for specific performance. In

view of the statement made on behalf of the applicants, this court granted a stay to the execution of the possession warrant with regard to Flat No. 502. Thereafter, on 9th October 2024, a statement was made on behalf of the applicants through the same counsel in the writ petition that the second appeal court has framed a question of law in respect of flat no. 502. Based on such a statement, the applicants secured protection from the execution of the possession warrant in respect of all the flats in the writ petition.

11. The writ petition was filed to challenge the order passed in the execution proceedings in respect of the possession warrant in respect of all the flats. When this fact was brought to the notice of this court, the conduct of the applicants was recorded, and the writ petition was dismissed on 7th July 2025, by imposing a cost of Rs. 1,00,000/- upon the applicants. This order was challenged by the applicants before the Hon'ble Apex Court. However, the Special Leave Petition was dismissed, and the applicants were granted liberty to file an appropriate application in the second appeal, including the application for amendment of the second appeal.

12. In view of the liberty, the applicants filed an application, i.e., Interim Application No. 11316 of 2025, seeking permission to withdraw the undertaking recorded in the second appeal that they

would press the second appeal only in respect of Flat No. 502. After arguing the said application for some time, the applicants withdrew the application on 1st April 2026, by tendering an apology for seeking withdrawal of the undertaking given at the time of securing interim protection in respect of one flat.

13. The aforesaid conduct on the part of the applicants is also one of the factors to be considered in the application for condonation of delay. In the absence of any statement in the application that they were unaware about the pendency of the suit and that they were never served in the proceedings, the grounds raised in the application that the applicants were exposed to the execution petition only in August 2024, is irrelevant for deciding the application for condonation of delay in filing the second appeal to challenge the concurrent judgments and decrees in respect of the specific performance granted to the plaintiff. In the absence of any satisfactory and justifiable reasons, the delay cannot be condoned.

14. Interim Application for condonation of delay is therefore dismissed.

15. In view of the dismissal of the interim application for condonation of delay, the second appeal stands dismissed.

16. The other pending applications, including the application for

stay, are disposed of as infructuous.

17. It is clarified that the interim protection granted by this court in respect of Flat No. 502 stands vacated.

(GAURI GODSE, J.)