



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4854 OF 2026

Amit Kantilal Lunkad & Anr.

....Petitioners

V/S

Aziz Vazir Khan & Ors.

....Respondents

WITH

WRIT PETITION NO.4683 OF 2026

Amit Kantilal Lunkad & Anr.

....Petitioners

V/S

Aziz Vazir Khan & Ors.

....Respondents

Mr. R.D. Soni with Mr. Karan Parmar, Mr. Nikhil Singhvi and Mr. Ashwin Hirulkar i/b Mr. Sidharth Sutaria *for the Petitioners.*

Mr. Zakir M. Shaikh with Ms. Ragini Rao *for Respondents.*

CORAM : SANDEEP V. MARNE, J.

DATE : 29 APRIL 2026.

P.C.:

1. These Petitions are filed challenging orders dated 12 March 2026 passed by the learned District Judge-17, Pune, dismissing Civil Miscellaneous Applications filed seeking condonation of delay of 280 days in preferring Appeals against decrees dated 17 December 2024 passed in Civil Suit Nos.120 of 2019 and 121 of 2019.

2. I have heard Mr. Soni, the learned counsel appearing for the Petitioner and Mr. Shaikh, the learned counsel appearing for the Respondents/original Plaintiffs.

3. The Petitioners are original Defendants in Civil Suit Nos.120 of 2019 and 121 of 2019 filed by the Plaintiffs-landlords seeking recovery of possession of the suit premises on various grounds such as default in payment of rent, non-use, structural changes in the premises and *bonafide* use. Petitioners appeared in the Suits and filed their Written Statements. However, thereafter Petitioners/Defendants failed to remain present before the Trial Court. They neither conducted cross-examination of Plaintiffs' witness nor led their own evidence. The Trial Court has decreed both the Suits by accepting all the four grounds of default in payment of rent, none-use, damage to the suit premises and *bonafide* requirement. The Suits were decreed on 17 December 2023.

4. The Petitioners/Defendants were negligent in not filing Appeals against the eviction decrees within prescribed statutory period of limitation. The Appeals were sought to be lodged before the District Judge after delay of 280 days.

5. For condonation delay of 280 days, Petitioners filed Civil Miscellaneous Application Nos.1531 of 2025 and 1532 of 2025. In both the Applications, similar pleadings were raised. It would be apposite to reproduce the justifications pleaded for seeking condonation of delay of 280 days in the Applications filed by the Petitioners/Defendants:

“2. However, there has been a delay of 280 days in filing the present Appeal. It is respectfully submitted that the Applicant have been facing several problems during the said period. There have been several false criminal complaints filed by certain persons with the police against the Applicant along with some civil proceedings, due to which the Applicant have been facing severe mental trauma and agony. The Applicant have settled several of the said

false proceedings by making arrangement of funds and the Applicant have been facing severe financial constraints.

3. Further, the Applicant needed to travel out of Pune on multiple occasions for reasons such consulting doctors in Mumbai regarding the ill-health of their mother, emergency situation in their family and certain unforeseen situations which were beyond the control of the Applicant.

4. The Applicant faced undue hardship and suffered financial crisis and were unable to meet their advocates and give them the necessary information, documents and instructions to file the Appeal.

5. It is respectfully submitted that the delay in filing the present Appeal is neither intentional nor willful.

6. The Applicant have a good case on merits and are of sanguine hopes of success in the said matter. There shall be irreparable loss and injustice caused to the Applicant if the delay to prefer the Appeal is not condoned and if the said delay is condoned, no such irreparable loss and injustice shall be caused to the Respondents.

7. It is respectfully submitted that the present application for condonation of delay by the Applicant should be allowed and the delay in filing the present Appeal should be condoned so that the matter can be adjudicated upon its merits.”

6. Thus, the justifications pleaded for seeking condonation of delay of 280 days in filing the Appeals included facing of problems due to filing of several false criminal complaints by certain persons and filing of some civil proceedings on account of which Petitioners faced severe mental trauma and agony. The Petitioners pleaded that they were required to travel out of Pune on multiple occasions and for consulting doctors in Mumbai regarding ill-health of their mother and for handling emergency situations in the family. Petitioners/Defendants also pleaded the pretext of facing undue hardship and suffering of financial crisis, which prevented them from meeting their Advocates. On above broad pretexts, condonation of delay of 280 days in filing the Appeals was sought. In my view, the justifications pleaded in the Applications are vague, without

any material particulars and more importantly, in absence of any documentary evidence. No documentary evidence was produced to establish alleged medical treatment of the mother of the Petitioners/Defendants. The Appellate Court has observed that the Petitioners/Defendants are renowned Builders in Pune city, who have completed various residential and commercial projects. The fact that the Petitioners/Defendants have referred to filing of criminal complaints and civil proceedings against them indicate that Petitioners are seasoned litigants. In that view of the matter, it is difficult to accept the position that the Petitioners/Defendants were prevented from meeting Advocates for the purpose of filing of the Appeals in time.

7. Also of relevance is the conduct exhibited by the Petitioners during pendency of the Suits. After filing Written Statements, Petitioners/Defendants made disappearing act before the Trial Court and neither cross-examined Plaintiffs' witness nor led their own evidence. The Petitioners/Defendants are thus negligent not only after passing of eviction decrees but also during the course of Trial of the Suits. Even if Petitioner/Defendants' conduct during pendency of the suits is to be monetarily ignored, they have failed to plead proper justification for condonation of undue delay of 280 days.

8. Mr. Soni has relied upon judgment of the Apex Court in ***Sheo Raj Singh vs. Union of India***¹. However, the principles discussed in paragraph 31 of the judgment are actually the reasons cited by the High Court in support of its order. In ***Sheo Raj Singh*** (supra) the Apex Court has

¹ Civil Appeal No.5867 of 2015, decided on 9 October 2023

declined to interfere with discretion exercised by the High Court when it was found that exercise of discretion was not an arbitrary exercise. In the present case, Petitioners have failed to plead sufficient cause for condonation of long delay of 280 days. Given their background and ability to handle large number of litigations, it is difficult to accept the position that Petitioners could have been prevented from seeking advice for filing of the Appeals within time.

9. Though this Court is not expected to go into the merits of the case while deciding the issue of condonation of delay, it is seen that grant of an opportunity to the Petitioners to prosecute the Appeals would be an exercise in futility. In the eviction decree, the Trial Court has accepted the ground of default of payment of rent. Admittedly, after issuance of notice under Section 15(2) of the Maharashtra Rent Control Act, 1999, Petitioners did not pay the rent. Mr. Soni submits that the Petitioners never received the notice issued by the landlords. Even if this contention is accepted, Petitioners had second opportunity of making good the default by depositing in the Court within 90 days of receipt of suit summons the arrears of rent, interest at the rate of 15% and costs of the suit. However, even this second opportunity was not availed by the Petitioners/Defendants and they remained intransigent in their approach of non-payment of rent. The least that is expected of the tenant who wants to enjoy protection from eviction is regular payment of rent. However, the Petitioners/Defendants are found to have defaulted in payment of rent for a considerable time. Despite being threatened with eviction action, they remained negligent and did not deposit rent in the

Court. In that view of the matter, it is quite questionable as to whether the Petitioners really have any case on merits for prosecution of the Appeal.

10. I am therefore of the view that the District Court has rightly rejected the Applications for condonation of delay. The District Court has correctly refused to exercise the discretion considering the facts and circumstances of the case. The District Court has recorded cogent reasons for refusing to condone the delay. It would be apposite to reproduce findings recorded by the Appellate Court in paragraph 8 of its orders which reads thus:

“8. It is settled law that, term "sufficient cause" used in Section 5 of the Limitation Act is to be construed liberally so as to advance substantial justice. The period of limitation for preferring the appeal is 30 days. As such, there is delay of more than 300 days in preferring the appeal. Moreover, as per applicants, the present application and appeal was ready on 04.12.2025 and it is preferred on 22.12.2025. The applicants have not provided any cause for the delay in filing the present application along with appeal though it appears that the present application and appeal was ready on 04.12.2025. As such, each day delay in preferring the appeal is not explained by the applicants in pragmatic manner. Admittedly, the cause of delay contended in the application is challenged by the respondents. The fact that applicants are the well known builders in Pune and they have completed various residential and commercial projects, is not disputed. The documents produced are the notices issued under the Securitisation And Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (**hereinafter referred as 'SARFAESI Act'**) and other financial institution and proceeding under Section 138 of the Negotiable Instruments Act (**hereinafter referred as 'NI Act'**). The documents produced are of the year 2025 and as per application, applicants were settling the said matters. It is not the case of the applicants they could not engage advocate in the criminal proceeding also. Considering the fact that applicants are renowned builders, their previous conduct during the trial of the suit, *prima-facie* there appear no substance in the contention of applicants that due to financial constraints, they were unable to meet their advocates and to give them necessary information and instructions to prefer appeal and due to the civil and criminal proceedings, they were under trauma. Moreover, no details

of the ill-health of mother are provided. As such, there appear mala fides on the part of applicants. Considering the previous conduct during the trial of the suit and above discussion, the delay appears to be intentional. From the appreciation of the material on record, *prima-facie* there appear no substance in the contention of the applicants that respondents have obtained the impugned decree by fraud. As such, in the humble opinion of the court considering the facts of the present case, the judgments relied by the applicants cited supra are not helpful to the applicants.”

11. I am in full agreement with the above findings recorded by the learned District Court. Consequently, Writ Petitions are bereft of merits and are accordingly **dismissed** without any orders as to costs.

(SANDEEP V. MARNE, J.)