

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 129 OF 2026

Rajiv Gulabchand Pandey

..Appellant

Versus

Mary George & Anr

...Respondents

WITH

INTERIM APPLICATION NO. 2188 OF 2026

IN

SECOND APPEAL NO. 129 OF 2026

Mr. Dushyant Pagare, for the Appellant.

Mr. S A P Thomas, for the Respondents.

CORAM : N. J. JAMADAR, J.

DATE : 7th APRIL 2026

ORDER :

1. Heard the learned Counsel for the parties.
2. This appeal is directed against an order dated 05th November, 2024, passed by the learned District Judge, Kalyan in Civil Miscellaneous Application No. 48/2020 whereby the said application preferred by the appellant for condonation of delay of 5 years and 95 days in filing the appeal against the judgment and decree dated 19th January, 2015 passed in Special Civil Suit No. 105/2010 by the learned Civil Judge, Kalyan, came to be rejected.
3. The Respondent Nos. 1 and 2 instituted the suit for specific performance of the contract for sale of the flat bearing No. 102,

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admeasuring 625 sq. feet + 80 sq. feet, 1st floor, B-wing - Prafulla Paradise, Survey No. 61/1, behind Gagangiri, Kalyan (the suit flat), entered into between the appellant and Respondent nos. 1 and 2 on 11th December, 2009.

4. The plaintiffs averred that, the appellant/Defendant No. 1 had agreed to sell the suit flat for a consideration of Rs. 14,70,000/- (Rupees Fourteen Lakhs Seventy Thousand). A sum of Rs. 8,70,000/- (Rupees Eight Lakhs Seventy Thousand) was paid towards part consideration. The plaintiffs have been ready and willing to perform their part of the contract. The Defendant No. 1 reneged from his promise and failed and neglected to execute the instrument.

5. By a judgment and decree dated 19th January, 2015, the learned Civil Judge returned the findings that, there was a contract for sale, part consideration was parted with by the plaintiffs and the Defendant No. 1 failed and neglected to perform his part of the contract. The learned Civil Judge declared that, the agreement for sale dated 11th December, 2009 was valid, subsisting and binding upon the parties and, thus, decreed the suit against the Defendant No. 1/appellant. The suit came to be dismissed against the Defendant No. 2 – Society.

6. The Defendant No. 1 did not prefer the appeal within the stipulated period. Thus, an application, being Civil Miscellaneous

Application No. 48/2020, for condonation of delay of 5 years and 95 days in filing the appeal, came to be filed.

7. Myriad reasons ranging from the delay and inaction on the part of the Advocates, engaged by the appellant, to the illness of the relatives, to the personal illness and financial distress on account of the closure of the business of the appellant, were sought to be ascribed for the condonation of delay.

8. By the impugned order, the learned District Judge rejected the application observing *inter alia* that, the application lacked bona fide and the reasons ascribed by the applicant did not constitute a sufficient cause for condonation of such huge delay.

9. Being aggrieved, the Defendant No. 1 is in Appeal.

10. Mr. Dushyant Pagare, the learned Counsel for the Appellant, submitted that though the Appellant had ascribed justifiable reasons for the condonation of delay, the learned District Judge, unjustifiably discarded those explanations by adopting a very rigid and hypertechnical view of the matter.

11. Mr. Pagare made an endeavour to drive home the point that the Appellant had brought material on record to demonstrate the delay and inaction on the part of the Advocates, who were approached by the Appellant to file the Appeal. The Appellant had done everything that was within his power by engaging Advocates to file the Appeal. Therefore, as

valuable rights of the Appellant are affected, the learned District Judge could not have rejected the Application for condonation of delay.

12. Mr. Pagare further submitted that the learned District Judge did not adhere to the overarching principle that, in the matter of condonation of delay, the Court is expected to adopt a liberal approach in the absence of intentional delay and mala fides. It was submitted that the Appellate Court committed a manifest error by applying the wrong test to judge the sufficiency of cause for the delay ascribed by the Appellant.

13. In contrast, Mr. S.A.P. Thomas, the learned Counsel for the Respondents, submitted that none of the explanations sought to be offered by the Appellant was reasonable or bona fide. It was submitted that the conduct of the Appellant, as emerges from the record, indicates that the Appellant deliberately chose not to file the Appeal despite having appeared before the Executing Court through the very same Advocate, who was allegedly entrusted with the brief to file the Appeal.

14. I have perused the averments in the application seeking condonation of delay. Incontrovertibly, a delay of five years and nine months can only be said to be huge and inordinate, by any standard. Thus, the Appellant was required to demonstrate that there were sufficient causes for not preferring the Appeal. It is true that in the matter of the condonation of delay, the Courts generally adopt a liberal

approach. The rationale for such a liberal approach is two-fold. First, no litigant benefits by approaching the Court belatedly. Thus, the Court cannot proceed with the presumption that the delay was intentional. Second, the cause of substantive justice is better sub-served if the lis is decided on merits rather than on the technicalities. However, if the Court finds that the causes ascribed for the delay are not bona fide, or the delay appears to be intentional, then the prayer for condonation of delay is not readily acceded to. The length of delay is undoubtedly not the sole criteria. However, the length of delay does have a bearing upon the exercise of discretion to condone the delay.

15. The Court may not insist upon an explanation for each and every day's delay. However, the onus rests on the party seeking condonation of delay to show that he was prevented by sufficient cause from approaching the Court, till the filing of the application for condonation of delay.

16. The distinction between the explanation for delay and excuses has been judicially recognized. Often, the parties offer excuses rather than explanations. In the case at hand, upon perusal of the averments in the Application for condonation of delay, it becomes evident that the application is replete with litany of excuses rather than explanation. An endeavour is made to lay the blame at the doorstep of successive Advocates, to whom the Appellant allegedly approached to file the

Appeal. The preoccupation of the Appellant on account of the familial responsibilities, illness of relatives, and personal illness are the other reason ascribed for the delay. Financial constraints on account of the loss in business is also attributed.

17. The aforesaid purported explanations do not appear to be worthy of credence. It is a matter of fact that, on 14th July 2015, the Appellant had obtained certified copy of the judgment and decree passed on 19th January 2015. The Appellant appeared before the executing Court in the month of June 2017. An order to execute the decree of specific performance by appointing a Court Commissioner/Official of the Court, came to be passed on 29th July 2017. This sequence of events, erodes the veracity of the claim of the Appellant that the Appeal could not be filed on account of the delay and inaction on the part of the Advocates. Having appeared in the Execution Petition, through an Advocate, it defies comprehension as to why the Appeal was not filed at least in the year 2017.

18. The rest of the reasons sought to be ascribed by the Appellant for the delay, ranging from familial responsibilities to illness of the relatives, to personal illness, and financial constraints, are all in the nature of excuses.

19. In the aforesaid backdrop, the view of the learned District Judge that the explanations sought to be offered by the Appellant were not

bona fide, cannot be faulted at, especially, in the context of huge and inordinate delay of five years and nine months. The length of delay does matter.

20. 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.

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)

¹ 2025 INSC 672.

21. The submission of Mr. Pagare that the Appellant has a good case on merits, and the refusal to condone the delay would affect the valuable rights of the Appellants, does not carry the matter any further. While, considering an Application for condonation of delay, the Court has to first satisfy itself that there was a sufficient cause for condonation of delay and that the explanation offered is bona fide. The Court cannot start with the consideration of the merits of the matter, which can be considered only in balance, where the explanation offered by the parties seeking the condonation of delay appears genuine and bona fide and there are equally weighty contentions in opposition to the prayer for condonation of delay.

22. 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 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

2 2025 SCC OnLine SC 54.

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)

23. Applying the aforesaid principles to the facts of the case at hand, this Court, on an independent analysis, comes to the conclusion that the explanations sought to be offered by the Appellant were neither genuine nor bona fide. Thus, the learned District Judge does not seem to have committed any error in rejecting the Application for condonation of huge delay.

24. Mr Pagare lastly submitted that the Appellant be granted time till the end of June 2026 to surrender the possession of the premises. Mr. Thomas, the learned Counsel for the Respondents, submitted that despite having given an undertaking to this Court on 19th December 2025 that the Appellant would handover possession of the subject premises in terms of the order of the executing Court within a period of six weeks thereof, if no favourable order is passed by the Supreme Court, the Appellant has not vacated the premises, even though the Special Leave Petition preferred by the Appellant, i.e., SLP(C) No. 5233 of 2026,

came to be dismissed on 16th February 2026. Therefore, the Appellant does not deserve any indulgence.

25. I find substance in the submission of Mr. Thomas. The Appellant has had a long rope, despite the executing Court having passed the orders in execution of the decree since the year 2017. Moreover, the Appellant has not complied with the undertaking given to this Court to handover possession of the subject premises. Thus, the prayer to grant time to vacate the subject premises cannot be acceded to.

26. Hence, the following order:

: O R D E R :

- (i) The Second Appeal stands dismissed.
- (ii) In view of the dismissal of the Second Appeal, the Interim Application does not survive and stands disposed.

[N. J. JAMADAR, J.]