

Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 2344 OF 2026
IN
SECOND APPEAL (ST) NO. 5416 OF 2026
WITH
INTERIM APPLICATION NO. 2423 OF 2026
WITH
INTERIM APPLICATION NO. 2425 OF 2026

Amod Manohar Gholap ..Applicant

Versus

Jagannath Ramchandra Gholap & ors. ...Respondents

Mr. Siddesh Pilankar, a/w Nitesh Gupta, for the Applicant -
Appellant.

CORAM : N. J. JAMADAR, J.

DATE : 1st APRIL 2026

Oral Order:

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1. Heard the learned Counsel for the Applicant.
2. This application is filed seeking condonation of delay of 2589 days in filing the second appeal against the judgment and decree passed by the District Court, Pune, in Civil Appeal No.70/2014 on 11th December, 2018. By the said decree, the Appellate Court was persuaded to allow the appeal preferred by the respondent – original plaintiff and decree the suit RCS/100/1995 by setting aside the judgment and decree dated 29th October, 2007 passed by the Civil Judge. The Appellate

Court has restrained the defendants, including the appellant, who was respondent No.2, (defendant No.2) in the appeal, from making any encroachment over the suit property and for causing any obstruction to the possession of the plaintiff over the suit property and by way of mandatory injunction directed the defendants to remove the construction erected by them over the suit property and also directed them to hand over vacant possession of the suit property to the plaintiff, within a period of three months thereof.

3. The appellant has preferred this application for condonation of delay with the assertions that respondent No.2 – defendant No.1, who was the father of the appellant, passed away on 1st July, 2022. The appellant was unaware of the proceedings. The appellant came to know about the passing of the impugned decree only upon having been served with the notice dated 2nd July, 2025, issued by the Executing Court in Execution Application No.4/2021. Hence, there was delay.

4. Ordinarily the Courts lean in favour of condonation of delay so as to advance the cause of substantive justice and decide the matters on merits rather on technicalities. However, where the delay is huge and inordinate, the delay cannot be condoned as a matter of course.

5. In the case at hand the delay of 2589 days is huge and inordinate by any standard. In the application for condonation of delay, the appellant has not ascribed any justifiable reasons.

6. The submission on behalf of the applicant that the applicant was residing separately from the other family members and, therefore, could not prefer the appeal in the stipulated period, does not merit countenance as the applicant himself was the party defendant to the suit in which eventually the decree came to be passed by the Appellate Court. The indolence or inaction on the part of the co-defendants would not thus enure for the benefit of the applicant. As the delay has gone virtually unexplained and the reasons ascribed by the applicant do not constitute a sufficient cause for the condonation of delay, this Court is not inclined to condone the delay.

7. 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

1 2025 INSC 672.

generosity. The observation 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)

8. 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 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)

9. Applying the aforesaid principles to the facts of the case at hand, this court finds that the application does not deserve to be countenanced.

10. IA/2344/2026, thus, stands dismissed.

11. In view of dismissal of IA/2344/2026, SA(ST)/5416/2026 as well as the IA/2423/2026 and IA/2425/2026 also stand disposed.

[N. J. JAMADAR, J.]