



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 3385 OF 2026

VISHWAS S/O. JANARDHAN WALDE VS. TRUSHANT S/O. ASHOKRAO UKEY

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. V.B. Gawali, Advocate for petitioner.
Mr. R.T. Anthony, Advocate for respondent.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE : 29.04.2026

Heard learned counsel for petitioner.

2. Issue notice to the respondent.
3. Mr. Anthony, appears on caveat and waives service on behalf of the respondent.
4. The petitioner has challenged order dated 18.12.2025, passed by the appellate Court thereby rejecting the petitioner's Miscellaneous Civil Application No.831/2024, which was filed by the petitioner seeking condonation of delay in filing the application under Section 148 of the Code of Civil Procedure for enlargement of time.
5. Learned counsel for the petitioner submits that the petitioner is the original defendant in the suit filed by the respondent, which was a suit for specific performance of contract. Since the suit was decreed, the

defendant filed an appeal, however, the appeal came to be dismissed in default by order dated 02.07.2022. Thereafter, the petitioner filed an application for restoration of the appeal vide Civil Misc. Application No.605/2023, which came to be allowed by order dated 09.11.2023, subject to costs of Rs.2000/- to be paid by the petitioner/applicant therein within fifteen days to the non-applicant. However, this order was not complied and the costs was not paid and therefore, the petitioner filed a fresh application bearing M.C.A. No.831/2024 for condonation of delay in filing the application under Section 148 of the Code of Civil Procedure for enlargement of time. This application came to be rejected by the impugned order and the same is challenged by way of instant petition.

6. Learned counsel for the petitioner submits that the petitioner/appellant had infact attempted to pay the costs of Rs.2,000/-, however, since he was not able to trace-out the respondent at the relevant time, the costs were not paid within the stipulated time of fifteen days. He submits that he also attempted to pay the costs to the learned counsel for respondent and although, the costs was paid on 02.04.2024, the same was returned by the counsel. He therefore submits that only for non payment of costs within time, the petitioner is non-suited and he is not able to contest the appeal on merits. He also submits that the application under Section 148 of the Code of Civil

Procedure was required to be considered, in view of the reasons mentioned therein and by considering the position of law, it ought to have been allowed.

7. Mr. Anthony, learned counsel appearing for respondent however, demonstrates the entire conduct on the part of the appellant, who failed to pay the amount within the time of fifteen days and even thereafter, the application for condonation of delay vide MCA No.831/2024 is filed after about the period of nine months. He therefore submits that the petitioner/appellant was not at all diligent in complying with the conditions imposed by order passed by the appellate Court condoning the delay. He also invites attention to the contentions in this petition about denial of opportunity of hearing which according to him are baseless.

8. While considering the controversy, it has to be noted that the petitioner's grievance is against rejection of an opportunity to pay the costs of Rs.2,000/- which was a condition for restoration of the appeal. Now, although, the petitioner is not apparently diligent in complying with the same order, the fact remains that by virtue of the impugned order, the petitioner is non-suited and deprived from contesting the appeal on merits. The appeal is with respect to a decree of specific performance of contract with respect to the property belonging to the petitioner and as such, only in the interest of justice, the petitioner needs to

be granted one more opportunity to pay the costs by enlarging the time. At the same time, the inconvenience suffered by the respondent also needs to be compensated by awarding appropriate costs.

9. Having regard to the controversy involved, the following order is passed:

(I) The writ petition is allowed.

(II) The impugned order dated 18.12.2025 passed by the appellate Court in MCA No.831/2024 is quashed and set aside.

(III) The petitioner's application bearing Civil Misc. Application No.831/2024 is allowed, subject to costs of Rs.7,500/- to be paid by the petitioner to the respondent in addition to the amount of Rs.2,000/- within a period of two weeks from today by depositing the same before the appellate Court.

(IV) Necessary compliance be made within two weeks.

10. In view of this, the writ petition is allowed and disposed of.

(Prafulla S. Khubalkar, J.)