IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMP(M) No.1767 of 2026 in OSA No.06 of 2026
Date of Decision:- 29.10.2026

Sarwan Singh **....Appellant**

Versus

Dharamjeet Kaur and Others **....Respondents**

Coram
The Hon'ble Mr. Justice G.S. Sandhawalia, Chief Justice
The Hon'ble Mr. Justice Bipin Chander Negi, Judge.

Whether approved for reporting?[1]

For the Appellant : Mr. Sunny Rawat, Advocate.

G.S. Sandhawalia, Chief Justice *(Oral).*

The present time-barred appeal has been preferred against the judgment passed by the learned Single Judge in ***Civil Suit No. 31 of 2014,*** titled as ***Dharamjeet Kaur Vs. Smt. Jagiro,*** dated 09.08.2019 **(Annexure P-7).** A prayer has also been made to set aside the execution orders passed by the learned Single Judge in ***Execution Petition No.32 of 2020,*** titled as ***Dharamjeet Kaur Vs. Smt. Jagiro,*** dated 27.10.2025 **(Annexure P-9),** wherein directions were issued for the registration of the sale deed in favour of the decree-holder.

---

[1] Whether reporters of Local Papers may be allowed to see the judgment?

2. It is pertinent to mention that the present applicant/appellant is the brother of the deceased-Smt. Jagiro, who was defendant No.1 in the Civil Suit. The suit was filed for the specific performance of a contract dated 18.01.2014 executed between Dharamjeet Kaur and Smt. Jagiro for land measuring 5 Bigha 7 Biswa situated in Village Manguwal, Pargana Palasi, Tehsil Nalagarh, District Solan, Himachal Pradesh. The said suit was decreed, and the plaintiff was directed to deposit the balance sale consideration of Rs.26,77,500/- with the Registry of this Court within a period of two months.

3. It is also pertinent to mention that the execution proceedings as such were disposed off on 20.08.2026 **(Annexure P-11)** as having rendered infructuous being fully satisfied, and closed against Smt. Jagiro, who was proceeded *ex-parte* in the said proceedings.

4. The present appeal is delayed by seven years and twenty-four days and is accompanied by an application for leave to appeal, filed by the applicant/appellant under Chapter 7, Rule 2(a) of the High Court of Himachal Pradesh (Appellate Side) Rules, 1977. The applicant/appellant states that he is adversely affected by the impugned judgment, as an earlier Civil Suit filed

by him against his sister-Smt. Jagiro, had already been decreed in his favour on 11.02.2019 **(Annexure P-2)** for possession by way of specific performance rather than the alternative relief of damages.

5. We are of the considered opinion that the application for condoning the delay of seven years and twenty-four days in filing the appeal is not liable to be accepted, keeping in view the fact that the applicant/appellant was well aware of the pendency of the Civil Suit, having already filed an application under Order 1 Rule 10 CPC, which was dismissed on 06.03.2019 **(Annexure P-6).** Thereafter, no steps were taken to challenge the said order. The Civil Suit now sought to be challenged was decreed in favour of the plaintiff-Dharamjeet Kaur, on 09.08.2019.

6. Counsel for the applicant-appellant has submitted that even upon the dismissal of an application under Order 1 Rule 10 CPC, a right would nevertheless subsist to file the present appeal. He has relied upon the judgment of the Apex Court in ***H. Anjanappa Vs. A. Prabhakar AIR 2025 SC 924,*** wherein it has been held that a third-party appeal would be maintainable filed by a transferee pendente lite and that the rejection of an impleadment application is not *per se* a ground to

reject an application for leave to file an appeal, while placing reliance upon paragraph 42 of the said judgment.

7. However, the said judgment does not help the appellant; rather, a closer reading of its factual aspects reveals that it covers the case against him. In that case, the appeals decided by the Apex Court challenged a delay of 586 days in filing an appeal in a suit for specific performance. The High Court had condoned the delay and granted leave to file an appeal, in spite of the fact that an earlier application for impleadment had been dismissed on 06.08.2014, an order that was never challenged. Furthermore, the said applicants were purchasers *pendente lite* in contravention of a temporary injunction order passed by the Trial Court. Although, the Apex Court held on the question of law that an appeal could be filed by a transferee *pendente lite* who is entitled to seek leave, it emphasized that deciding whether to grant such leave falls within the jurisdiction of the Court, and such discretion must be exercised judiciously. Resultantly, the appeal was allowed, and the orders passed by the High Court were set aside. The relevant paragraphs of the said judgment read as under:-

> *"56. Thus, a lis pendens transferee though not brought on record under Order XXII Rule 10 CPC, is entitled to seek leave to appeal against the final decree passed against this transferor,*

> *the defendant in the suit. However, whether to grant such leave or not is within the discretion of the court and such discretion should be exercised judiciously in the facts and circumstances of each case.*
> *57. Having regard to the fact that the Respondent Nos. 1 and 2 respectively purchased the suit property during the pendency of the suit instituted for specific performance and that too, while the injunction against the original owner (transferor) was operating, the Respondent Nos. 1 and 2 respectively could not be said to have even made out any good case for grant of leave to appeal."*

8. In such circumstances, we have examined whether there is scope for condoning the delay and granting leave to file an appeal.

9. However, in the present case, as noticed above, there is an inordinate delay in filing the application for leave to appeal. Apparently, the applicant's application under Order 1 Rule 10 of the CPC was dismissed on 06.03.2019 **(Annexure P-6),** and the main suit was subsequently decreed on 09.08.2019. Thereafter, the applicant-appellant made no effort to challenge the said order by filing an appeal.

10. In the application for condonation of delay, bearing CMP(M) No.1767 of 2026, the case sought to be made out is that Mutation No.349 dated 18.12.2025 was entered in favour of the plaintiff-Dharamjeet Kaur, during the execution proceedings. The

applicant claims that they acquired actual and effective knowledge of the litigation only after this adverse revenue entry was made, prompting them to take immediate steps to file the appeal.

11. While such an explanation might have constituted sufficient cause to condone the delay had an application under Order 1 Rule 10 CPC not been previously filed but the facts here are different. Having filed that application and received an order of dismissal on 06.03.2019, the applicant-appellant was well aware of the pendency of the litigation. The suit was eventually decreed six months later on 09.08.2019. Despite this knowledge, no effective steps were taken to file an application for leave to appeal or to challenge the judgment in question within the period of limitation.

12. In such circumstances, we are of the considered opinion that a vested right had accrued in favour of the plaintiff in the Civil Suit. The plaintiff had successfully executed the decree by filing an execution petition, pursuant to which directions on 27.10.2025 were issued resulting in the registration of the sale deed. Resultantly, the said execution petition was disposed of as fully satisfied on 20.03.2026. The subsequent filing of this appeal

on 29.09.2026 is nothing but a misuse of the process of the Court to further complicate and prolong the issue.

13. While dismissing the application under Order 1 Rule 10 of the CPC, the learned Single Judge had also noted the close relationships *inter se* the parties. The learned Single Judge had also adversely commented on the fact that the agreement in question in favour of the present applicant was dated 21.12.2001 in the Civil Suit which was only filed by him on 23.04.2014. It was observed that the present applicant slept over his right for a long period of over twelve years, filing the suit immediately before the suit filed by the plaintiff-Dharamjeet Kaur.

14. The Court further commented upon the conduct of the parties, noting that the other suit was involving the present applicant-appellant also featured close *inter se* relations; two brothers, Karam Singh and Sarwan Singh, sons of Labhu Ram, who had filed the suit against their sister-Jagiro, daughter of Labhu Ram. Their suit for specific performance and possession was based on an agreement dated 21.12.2001, but was filed on 23.04.2014 after 12 years. It has also been observed that in the litigation the proceedings was being pursued by Jaswant Singh, who is the nephew of Jagiro and the son of the other brother, Karam Singh.

15. In such circumstances and facts stated above, we are of the considered opinion that no case is made out to condone the delay.

16. Reliance can thus be placed upon the judgment of the Apex Court in ***Maniben Devraj Shah versus Municipal Corporation of Brihan Mumbai (2012) 5 SCC 157,*** wherein it has been held that the vesting of certain rights on the litigants has to be kept in mind before condoning the delay.

17. Recently the Apex Court, in ***Civil Appeal No.317 of 2025,*** titled as ***H. Guruswamy & Ors. Versus A. Krishnaiah since deceased by LRs,*** decided on 08.01.2025, has held that the Court owes a duty to first ascertain the bona fide of the explanation offered and only if sufficient cause is assigned, then the Court may bring into aid the merits of the matter for the purpose of condoning the delay. The appellant, as such, cannot keep the 'Sword of Damocles' hanging over the head of the opposite side for an indefinite period. The relevant paragraph reads as under:-

> ***"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 con***20.***donation 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."*

18. Keeping in view the above, we are of the considered opinion that no case is made out to condone the delay in the peculiar facts and circumstances of case. Resultantly, we dismiss the application for condonation of delay, and accordingly, the application for grant of leave to appeal will follow the same fate as well as the main appeal.

19. Accordingly, the present appeal is dismissed, in view of the dismissal of application for condonation of delay and leave to appeal.

20. Pending miscellaneous application(s), if any, shall also stand disposed of.

(G.S. Sandhawalia)
Chief Justice

(Bipin Chander Negi)
Judge

29th October, 2026
(Munish Thakur)