



2026:DHC:1582



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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*Reserved on: 19th January, 2026
Pronounced on: 23rd February, 2026*

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RSA 13/2026 & CM APPL. 3665/2026 (delay)

HIRA DEVI (SINCE DECD) THR LR

(Through LR- Meena w/o Attar Singh)

r/o H No. 4/111, DDA Flats

Kalkaji, New Delhi- 110019

.....Appellant

Through: Mr. Tushar Mahajan and Mr. Tanmay
S. Surana, Advocates.

versus

1. **PUSHPA DEVI**
w/o Kailash Chand
r/o J-3/202, DDA Flats,
Kalkaji, New Delhi- 110019
2. **KAILASH CHAND**
s/o Sh. Rati Ram
r/o J-3/202, DDA Flats,
Kalkaji, New Delhi- 110019
3. **DEVINDER SINGH**
s/o Sh. Kripal Singh
r/o Kanwar Sweet Shop No. 1820/9,
Govindpuri Extension,
Kalkaji, New Delhi- 11001
4. **DAL CHAND**
Through his LRs
 - a. **Dayawati**
w/o Dal Chand
 - b. **Ritesh Verma @ Rinku**
s/o Sh. Dal Chand



c. **Kapil Verma @ Kanu**
s/o Sh. Dal Chand

d. **Geetanjali**
d/o Dal Chand

e. **Vandana @ Shanu**
d/o Dal Chand

All residents of Flat No. 4/108,
DDA Flats, Kalkaji, New Delhi- 110019

5. **MAHESH**
s/o Late Attar Singh/ Chand
r/o H No. 4/111, DDA Flats
Kalkaji, New Delhi- 110019
6. **PAWAN**
s/o Late Attar Singh/ Chand
r/o 20/620, DDA Flats, JJ Colony
Kalkaji, New Delhi
7. **PRAKASH**
s/o Late Attar Singh/ Chand
r/o 111349, DDA Flats, JJ Colony
Kalkaji, New Delhi

.....Respondents

Through: None

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. Regular Second Appeal has been filed on behalf of the Appellant Hira Devi (Plaintiff in the main Suit) under Section 100 of the Civil Procedure Code, 1908 (*hereinafter referred to as 'CPC'*) against the ***Judgment dated***



24.09.2025 whereby the learned District Judge, New Delhi has dismissed the Appeal against Judgment dated 19.04.2017 passed by the learned JSCC-cum-ASCJ-cum-Guardian Judge (South), New Delhi filed by the original Plaintiff, as *being barred by limitation*.

2. The **brief facts** are that a ***Suit for Possession and Declaration*** was filed by the **original Plaintiff Hira Devi** against the Respondent, for possession of property bearing No. 4/109, DDA Slum Flats, Kalkaji comprising of one room on the fourth floor (*hereinafter referred to as 'Suit Property'*), and Declaration of the documents dated 27.03.2000 being forged and fabricated and thus, as null and void.

3. *Vide* Order dated 26.02.2010, the Defendant No.1 and 2 were proceeded *ex parte*, while Defendant No.3 contested the Suit by filing his Written Statement. During the proceedings, the original Plaintiff expired, and the case was continued to be contested by her legal heir, Sh. Attar Singh.

4. On the basis of the pleadings, the following issues were framed:

1. *Whether the suit filed by the plaintiff is barred by limitation? OPD*
2. *Whether plaintiff is entitled for a decree of possession in respect of suit property, as prayed for in the suit? OPP*
3. *Whether plaintiff is entitled for a decree of declaration, as prayed for? OPP*
4. *Relief.*

5. The **original Plaintiff Smt. Hira Devi** had examined herself as PW1 to prove documents Ex.PW1/1 to Ex.PW1/5.



6. **Defendant No.3** deposed as D3W1 and relied on documents Ex.D3W1/1 to Ex.D3W1/8.

7. On the appreciation of the documents and evidence, the Trial Court *dismissed the Suit of the Plaintiff vide Judgment dated 19.04.2017*, by holding that the Plaintiff had failed to prove her possession over the Suit Property and also the non-execution of documents in favour of Defendant No.1. Also, it was **held that the Suit is barred by limitation**.

8. Subsequently, an **Appeal** was preferred by the Appellant against the Judgment dated 19.04.2017, along with the Application under Order XLI Rule 3A CPC, for the condonation of delay of 1589 days. The Application was dismissed on **24.09.2025** on the ground that the Plaintiff had failed to explain the delay of 1589 days. Consequently, the Appeal was also dismissed, which is the subject matter of the present Appeal.

9. The **grounds** on which the Impugned Judgment has been challenged, is that the Appeal has been dismissed on the ground of delay without examining that the Judgment dated 19.04.2017 passed by the learned Trial Court, had misapplied the **law of limitation**, to a consolidated *Suit for Possession and Declaration*. Such refusal has resulted in continuation of a patently illegal decree. It has not been appreciated that delay must be examined in the context of the facts of each case. Reliance on Pathapati Subba Reddy vs. Special Deputy Collector (LA), (2024) 12 SCC 336 to reject the *Application for Condonation of Delay* is misapplied, since it does not mandate mechanical rejection of delay Applications and does not permit refusal of condonation where such refusal perpetuates an illegal decree.



10. Reliance has been placed on Sopanrao & Anr. vs. Syed Mehmood & Ors., (2019) 7 SCC 76, wherein it is stated that in a *Suit for Possession based on title, even when coupled with Declaratory relief*, the applicable period of limitation is twelve years under Article 65 Limitation Act, 1963. In the present case, the learned *Trial Court grossly erred in applying a limitation period of three years to dismiss the Suit*. The refusal to condone delay in filing the Appeal, in such circumstances, amounts to allowing an *ex facie* illegal Decree to attain finality.

11. The learned Trial Court had erroneously relied upon unregistered documents such as the *General Power of Attorney, Agreement to Sell and Will* to assume title in favour of the Defendants. Reliance has been placed on Ramesh Chand (D) through LRs vs. Suresh Chand & Anr., Civil Appeal 6377/2012 decided on 01.09.2025 wherein it has been held that such documents do not convey ownership or title in immovable property. The impugned Judgment has taken the erroneous approach, which is directly contrary to law.

12. The impugned Judgment has held that mere participation in Execution proceedings, disentitled the Appellant from seeking condonation of delay. However, it has not been considered that defending Execution proceedings does not amount to abandonment of the statutory right of Appeal and cannot by itself be treated as negligence or lack of *bona fides*.

13. The impugned Judgment has erroneously *treated the delay as deliberate*, while completely ignoring that the Appellant remained in possession under a subsisting Court Order until 18.03.2021, and was compelled to defend Execution proceedings only to protect her residence



and livelihood. Participation in Execution proceedings, in law, cannot be equated with abandonment or waiver of the statutory right of Appeal and the refusal to condone delay on this ground amounts to a patent misapplication of legal principles.

14. It is submitted that it has been erroneously held that the filing of the Appeal after dispossession, is an evidence of lack of *bona fides*. The Appellant was dispossessed through Court Execution and the refusal to condone delay, directly resulted in serious civil consequences.

15. It is settled law that procedural rules of limitation, are handmaids of justice and cannot be applied in a manner that results in perpetuation of an illegal or jurisdictionally defective Decree, particularly where refusal to condone delay, forecloses adjudication on merits of a civil right in immovable property.

16. The Impugned Judgment fails to appreciate that the Appellant is a senior citizen, suffering from serious ailments, physical incapacity and extreme financial hardship, which were further aggravated by the Covid-19 Pandemic. These circumstances clearly constituted sufficient cause preventing timely filing of the Appeal and the rejection of the Delay Application, reflects non-exercise of judicial discretion vested under Section 5 Limitation Act.

17. The impugned Judgment has been passed in a rigid and punitive manner with respect to limitation, and fails to consider that refusal to condone delay, would result in perpetuation of a decree suffering from patent errors of law and shuts the doors of Appellate scrutiny, on a purely



technical ground. Thus, the learned District Court has acted illegally and with material irregularity.

18. The Impugned Judgment raised *substantial questions of law* on how discretion to condone delay must be exercised and on the duty of an Appellate Court to prevent an illegal decree from being allowed to stand. By refusing condonation despite patent legal errors in the decision of the learned Trial Court, the learned District Court has failed to exercise its jurisdiction properly, thereby attracting interference under Section 100 CPC.

19. *Therefore, prayer is made for the setting aside of the Impugned Judgment dated 24.09.2025 and remand to the learned District Judge for decision on merits.*

Submissions heard and record perused.

20. The Appellant had filed a Suit *for Possession and Declaration* against the Respondent for possession of the Suit Property and Declaration of the documents dated 27.03.2000 being forged and fabricated, and thus, null and void. *The Suit was dismissed on 19.04.2017 by Ld. JSCC-cum-ASCJ-cum Guardian Judge* on the ground that the factum of execution of documents was within the knowledge of Plaintiff since the year 2000, and the same had thus, become barred by limitation. It was also found that the Plaintiff had failed to prove her possession in the Suit Property and even the fact of non-execution of documents in favour of Defendant No.1.

21. In the interim, *the Execution Petition was filed on 13.10.2017 and the possession was taken by the Respondent.*

22. *Thereafter, an Appeal bearing No. RCA DJ 19/2021, was filed on 04.09.2021 before Ld. ADJ against the Judgement dated 19.04.2017,*



which was supported with an Application under Order XLI Rule 3-A CPC, for condonation of Delay of 1504 days in filing the Appeal, but the Application was dismissed and consequently, the Appeal was also dismissed.

23. The *Application seeking Condonation of Delay* under Order XLI Rule 3-A CPC for a delay of 1504 days in filing the Appeal, had been filed on behalf of the Appellant before the learned District Court on the **grounds** that on 18.03.2021, the Appellant along with his wife were dispossessed from the suit property, due to the execution of Court direction by the Bailiff. The household articles of the Appellant were thrown out on the road, and the Appellant and his wife were compelled to live on rent. The Appellant has no independent source of income, and his rent was also being paid by his well-wisher, which cannot be continued for long. The life of the Appellant has been deteriorating due to the dismissal of his suit by the learned Trial Court, which has caused a great loss to his life.

24. The Appellant has been suffering from various old age-ailments, due to which he is unable to walk properly, and he and his wife have been spending life with the support and sympathy of relatives, with limited source of living means. Due to these reasons, the Appellant was unable to engage Advocate for the present appeal against the Judgment dated 19.04.2017. The Appellant finally engaged a legal counsel on 17.07.2021 in order to exercise his rights. It was further averred that there had been a surge of Covid-19 for two years, due to which he was highly vulnerable to infection of Covid-19. Therefore, he was unable to file the appeal within the prescribed time.



25. The primary issue for consideration is *whether dismissal of the Application for condonation of delay, was erroneous; and consequent dismissal of Appeal was justified.*

26. The ***first ground*** seeking condonation of delay was that the Appellant is a ***senior citizen, suffering from ailments, physical incapacity and extreme financial hardship***. The Applicant had not placed his medical documents on record to substantiate that he was on bed rest of suffering from ailments due to which his movement was curtailed. The learned District Judge has correctly rejected this explanation as there was no documents which could show that the Appellant was incapacitated to such an extent that he was prevented from approaching the Appellate forum within the stipulated time period. No medical records have been filed even with the present Appeal to substantiate this claim.

27. The ***second ground*** taken by the Appellant to explain the delay was that he was ***unable to engage a legal counsel*** due to the aforesaid health constraints and financial hardships. As per the material on record, the Appellant had appeared before the Executing Court on 13.02.2018 and 20.03.2018, and 27.09.2018 respectively, in Execution Petition bearing No.387 of 2017. Therefore, he was aware regarding not only the Judgement dated 17.04.2017, but also about the Execution Proceedings. He despite his participation in the Execution Proceedings, chose not to prefer the Appeal. He was not only aware of the Decree, but also resisted it, till the Possession was taken on 18.03.2021. If he could contest the Execution proceedings, there is no reason why he could not have filed the Appeal on time.



28. Despite being aware regarding ongoing proceedings, the Appeal was filed only after the possession was taken on 18.03.2021. The learned District Judge has rightly observed that the Appellant had failed to act diligently and has remained selectively active in approaching the Court, by appearing in the Execution Proceedings but failing to file the Appeal within the prescribed period.

29. The learned District Judge has rightly held that the Appellant was well aware of the Judgment dated 17.04.2017, as well as the Execution Proceedings. The delay of about four years, in filing of the Appeal, has rightly not been condoned in these circumstances.

30. The **third ground** taken by the Appellant is that there had been a surge of Covid-19 during the **Covid-19 Pandemic**, and the Appellant had been at the risk of infection. The learned District Judge observed that even if it is assumed that the Appellant could not file the Appeal during the Covid-19 Pandemic, the Appellant had failed to explain the delay in filing the Appeal from 19.05.2017 till 01.03.2020.

31. The period of limitation for filing the Appeal, was 90 days from date of passing of Order dated 19.04.2017. Despite that, there was a delay of around 1589 days in filing of the Appeal, which delay has not been explained by the Appellant.

32. The learned District Judge has rightly held that even if the time period during the Covid-19 pandemic was to be excluded in terms of Suo Motu, Writ Petition (C) No. 3 of 2020 (*In Re: Cognizance for Extension of Limitation*), the statutory period of limitation had expired long before the Covid-19 Pandemic, and no cogent explanation has been given for non-



filing of the Appeal during said period. This ground, was therefore, rightly rejected.

33. In the present Appeal, reliance has been placed on Inder Singh vs. State of Madhya Pradesh, 2025 SCC OnLine SC 600, wherein it has been stated that a major aspect which has to be kept in mind is that, if in a particular case, the merits have to be examined, it should not be scuttled merely on the basis of limitation. Also, in Esha Bhattacharjee vs. Managing Committee of Raghunath Nafar Academy & Ors., (2019) 7 SCC 76, the principles laid for condonation of delay, include that no presumption can be attached to deliberate causation of delay, but gross negligence on the part of the counsel or litigant is to be taken note of. *Further, the conduct, behaviour and attitude of a party relating to the inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.*

34. In view of the aforesaid, it is evident that the Application for Condonation of Delay has not been scuttled merely on the basis of limitation, but rather the conduct, behaviour and attitude of the Appellant, who has, despite actively participating in the Execution Proceedings since 2018, preferred the Appeal only after the conclusion of Execution on 18.03.2021.

35. It is settled law that while considering an Application for condonation of Delay, the Court must be satisfied that the Appellant was prevented by any sufficient cause from pursuing his case, and unless any satisfactory



explanation is furnished, the Court cannot allow the Application for Condonation of Delay. No sufficient cause has been shown by the Appellant for the condonation of delay in filing of the Appeal against Judgment dated 19.04.2017.

36. In the case of Basawaraj vs. Land Acquisition Officer, (2013) 14 SCC 81, it has been held that “*in case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamount to showing utter disregard to the legislature.*” It was further observed that **No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever.**

37. In view of the aforesaid discussion, it is clear that the Appellant has failed to act diligently and has remained selectively active in approaching the Court, by appearing in the Execution Proceedings, but failed to file the Appeal within the prescribed period. There is no infirmity in the decision of the learned District Judge, in dismissing the Application under Order XLI Rule 3-A CPC for a delay of 1504 days in filing the Appeal.

38. There is no merit in the present Appeal, which is hereby, **dismissed**.

39. The Appeal stands disposed of along with the pending Application(s).

(NEENA BANSAL KRISHNA)
JUDGE

FEBRUARY 23, 2026/VA