IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

SECOND APPEAL NO.26 OF 2015

APPELLANTS On R.A. (Ori. Def.1) : Narayan s/o. Janardhan Pitale Since dead through its legal heirs.

1(a) Smt. Leelabai w/o. Trambakrao Badhe,
(elder sister of deceased Petitioner)
Aged about 92 years, Occ: Nil,
C/o. Smt. Pranita Wakhre, 4, Mangalmurti Apartment, Khare Town Dharampeth,
Nagpur.

1(b) Shri. Keshav S/o. Janardhan Pitale,
Since dead through his legal heirs.

1(b)(i) Smt. Malti wd/o. Keshav Pitale,
(niece of deceased petitioner),
Aged about 70 years, Occ: Household

1(b)(ii) Shri. Abhay s/o. Keshav Pitale,
Aged about 46 years, Occ: Service,

Both R/o. Kranti Colony, Behind Swastik Nagar, Bhandara Road, Amravati.

1(b)(iii) Mrs. Madhuri w/o. Rajendra Deshmukh, Aged about 44 years,
Occ: Housewife, R/o. Od. 37/3,
Urja Nagar, Tadoba Road, Chandrapur.

1(c) Smt. Pratibha w/o. Bhaskar Kamalwar,
(Elder sister of deceased petitioner)
Aged about 78 years, Occ: Housewife,
R/o. Plot No.23, Vivekanand Nagar.
Wardha Road, Nagpur.

1(d) Smt. Sushila w/o. Vyankatesh Khapli (since dead) through her legal heirs.

1(d)(i) Shri. Sudhir s/o. Vyankatesh Khapli, (Nephew of deceased petitioner) Aged about 68 years, Occ: Retired, R/o. "Gauri" Yewalekar Mala College Road, Nashik.

1(d)(ii) Shri. Anil s/o. Vyankatesh Khapli, (Nephew of deceased petitioner) Aged about 38 years. Occ: Business "Bhilwadar", R/o. Madhuri Cold Drinks. Rautwadi, Akola.

1(d)(iii) Smt. Alka Afale, (niece of deceased petitioner) Aged about 60 years, Occ: Housewife Pradhanesh Housing Society, Kothurd, Pune

1(e) Smt. Vidhya w/o, Shripad Joshi, (since dead) through legal heirs

1(e)(i) Ku. Prajakta Shripad Joshi, (niece of deceased petitioner) Aged about 32 years, Occ: Private. R/o: Gopal Colony, Opp. Prof. Kshirsagar's House, District Akola.

1(e)(ii) Smt. Rutuja W/o. Ravindra Bhagat, (niece of deceased petitioner) Aged about 32 years, Occ: Nil, R/o: H-No.3706, New Bajaj Nagar, Near Sal Krishna Temple, Gondevi Road, Ambarnath (West), Thane.

..VERSUS..

RESPONDENTS : 1. Shashank S/o Pandurang Pande, Aged about 47 years, Occupation, Lawyer. R/o Dinanath School, Dhantoli, Nagpur.

2. Ashok S/o Pandurang Pande. dead, Occu. Rtd. R/o Near Dinanath School, Dhantoli,Nagpur.

2-(i). Mrs. Suhasini Ashok Pande, Aged about 66 years, occu. Housewife

2-(ii). Miss Anjali D/o Ashok Pande, Aged about major, occu. Not known.

R/o Dinanath School, Dhantoli, Nagpur.
2-(iii). Mrs. Sandhya W/o Vivek Dani, Aged about 36 years, Occu. Service, R/o plot No.49, Bhagwan Nagar Nagpur.

3. Smt. Uma W/o Mahesh Joshi dead, Occu Household-R/o L/82, Raghuji Nagar, Nagpur.

Appeal is dismissed against R.No. 3(a to c), 4, 5 vide Reg (J) order dt. 12.07.18

3-(a) Shri. Mahesh S/o Rajaram Joshi. Aged about 75 years, Occu. Retired

3(b) Shri. Shantanu S/o Mahesh Joshi. Aged 31 years, occu. Business,

3(c) Kalyani Mahesh Joshi, Aged about 40 years, occu. Household

All 3 (a) to (c) residing at Parna Netra, Sansodhanalaya, Dhaba, Dist. Nagpur.

3(d) Smt. Manushree Padmanabha Kulkarni, Aged about 35 years Occu. Household Resident of C/o advocate Kulkarni, Cradak town, Congress Nagar, Dhantoli.

4. Vasundhara W/o Manohar Purandare, Aged about major R/o Kalpana Dandekar Lane, Baroda.

5. Smt. Shubhada W/o Arvind Mahadani, Aged about 55 years Occu. Service. R/o Near Dinanath High School, Dhantoli Nagpur.

Mr D. V. Chauhan, Senior Advocate a/b Mr A. B. Moon & Mr. Parth C. Malviya, Adv. for Appellants.
Mr K. B. Ambilwade, Advocate for Respondent No.1.
Mr S. P. Bhandarkar, Advocate a/b Mr G. S. Singh, Advocate for Respondent no.2(iii).

CORAM	:	M. W. CHANDWANI, J.
RESERVED ON	:	6th AUGUST, 2025.
PRONOUNCED ON	:	19th SEPTEMBER, 2025

JUDGMENT

1. Rejection of the application for condonation of delay by the learned District Judge, Nagpur in preferring the First Appeal by the appellant is under challenge in this appeal.

2. The following substantial question of law was framed by this Court *vide* order dated 16.01.2017.

> *"Whether the lower Appellate Court was right in rejecting the appeal on the ground that no sufficient cause is made out for condonation of delay ?"*

3. The appellants herein are the legal representatives of deceased Narayan Janardhan Pitale who was the defendant in Regular Civil Suit No.20 of 1993. The said suit was filed by respondent No.1 – Shashank Pande and the predecessor in-title of the remaining respondents i.e. Ashok Pandurang Pande, Vijaya Pandurang Pande, Uma Mahesh Joshi and Vasundhara Manohar

Purandare for declaration and permanent injunction on the premise that they became the owners of the suit property by way of adverse possession and that the mutation entry in the name of the predecessor-in-title of the appellant – Narayan Pitale (original defendant) is null and void. Narayan Pitale contested the suit by filing written statement. However, he did not cross-examine the plaintiffs and their witnesses, nor did he rebut any evidence by entering the witness box and therefore, the suit came to be decreed by the Trial Court. Narayan Pitale filed an application before the First Appellate Court for condonation of delay which came to be rejected by the impugned judgment and decree. Therefore, this second appeal came to be filed.

4. The grounds mentioned in the application for condonation of delay before the District Judge are that, the original plaintiffs had filed Misc. Civil Appeal No.515 of 1996 against rejection of the application for temporary injunction in the said suit which came to be dismissed by the learned District Judge by order dated 18.11.1997. The said judgment was carried in civil revision before this Court *vide* Civil Revision Application No.529 of 1998. Narayan Pitale filed reply on 20.07.1998 before this Court. Since, the matter was pending before this Court, the hearing before the Trial Court was halted.

Narayan Pitale was an old aged person and therefore, he appointed his brother Chandrakant Pitale to represent him in that case. However, Chandrakant Pitale shifted to Mumbai. After three years, when Chandrakant Pitale enquired with his counsel, he was informed that the respondents had withdrawn the said revision application on 06.07.1998. The appellants were under the impression that the civil revision application is pending. However, in wake of withdrawal of the application behind the back of the appellants, the Trial Court proceeded in the matter and passed the impugned judgment and decree on 31.01.2000. The appellants came to know this fact in the month of February 2002 and they immediately filed an appeal alongwith the application for condonation of delay.

5. Mr. D. V. Chauhan, learned Senior counsel assisted by Mr. A. B. Moon appearing on behalf of the appellants submitted that presence of the parties is not required in the High Court and therefore, the litigant delegates everything to his advocate trusting that he will be duly represented and will be duly informed. According to him, the appellants and their counsel were not aware about the withdrawal of the civil revision application filed by the respondents before the High Court on 06.07.1998 and they were under the impression that the matter before the Trial Court will not proceed

because the civil revision application is pending. Under that impression, they did not appear before the Trial Court and consequently, the Trial Court passed the impugned judgment and decree without participation of the appellants.

6. He further submits that, the grounds raised in the application for condonation of delay constitute sufficient cause for not preferring the appeal within time. The appellants remained confident that their lawyer will look after their interest in the High Court since personal appearance of the appellants was not required before the High Court. The appellants have done what is expected from a litigant. Just because they were not aware about the withdrawal of the civil revision application, they could not appear before the Trial Court under the assumption that the civil revision application is pending. According to him, a litigant is dependent upon his counsel, more particularly in the High Court where the parties are not required to attend the cases on a daily basis as the cases before the High Court are not being listed periodically. This aspect has not been considered by the Trial Court which resulted into rejection of the application for condonation of delay which has caused injustice to the appellants. To buttress his submission, he seeks to rely on the decision of the Hon'ble Supreme Court in the case of ***Kumari Sahu vs.***

Bhubanananda Sahu and Ors [Civil Appeal (Diary) No. 41995/2024, decided on 31.01.2025] wherein, the Hon'ble Supreme Court after considering the decision in the case of ***Rafiq and Another vs. Munshilal and Another***, ***(1981) 2 SCC 788*** while condoning the delay has observed that a considerable number of litigants are completely dependent on their counsel and they are not being informed about the progress of the proceedings by their counsel.

7. Conversely, Mr. K. B. Ambilwade, learned counsel appearing on behalf of respondent No.1 submitted that sufficient cause has not been properly explained by the appellants and therefore, the First Appellate Court has rightly rejected the application for condonation of delay. He submitted that Narayan Pitale did not enter the witness box and failed to prove the contents of the application. According to him, against the rejection of the application for condonation of delay, a second appeal will not lie. Hence, he sought rejection of the application.

8. Mr. S. P. Bhandarkar, learned counsel assisted by Mr. G. S. Singh appearing on behalf of respondent No.2(iii) submitted that there is a delay of more than two years in filing the appeal. The reason mentioned in the application for condonation of delay is not

properly explained by the appellants. Lawyers are always blamed for the litigant ignoring their duties. Therefore, a litigant who is not diligent shall not be given concession and the case in hand is not a case where sufficient cause can be liberally construed. According to him, by Section 3 of the Limitation Act, 1963, a right has been created in favour of the respondent and that cannot be taken away easily. Hence, according to him, the facts of the present case do not entitle the appellant for the benefit of condonation of delay. To buttress his submission, he seeks to rely on the decision of the Hon'ble Supreme Court in the following cases:-

a) ***P. K. Ramchandran Vs. State of Kerala and another, (1997) 7 SCC 556*** (para no. 6)

> *"6. Law of limitation may harshly effect a particular party but it has to be applied with all its rigour when the statute so prescribe and the Courts have no power to extend the period of limitation on equitable grounds. The discretion exercised by the High Court was, thus, neither proper nor judicious. The order condoning the delay cannot be sustained. This appeal, therefore, succeeds and the impugned order is set aside. Consequently, the application for condonation of delay filed in the High Court would stand rejected and the Miscellaneous First Appeal shall stand dismissed as barred by time. No costs."*

b) ***Basawaraj and another Vs. Special Land Acquisition Officer, (2013) 14 SCC 81*** (para no. 15)

"15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. 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 tantamounts to showing utter disregard to the legislature."

c) ***Balwant Singh (dead) Vs. Jagdish Singh and others, (2010) 8 SCC 685*** (para no. 26)

"26. The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right, as accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly."

d) ***Pathapati Subba Reddy (Died) by L.Rs and others Vs. Special Deputy Collector (LA), 2024 SCC Online SC 513*** (para no. 26)

> *"26. On a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that:*
>
> *(i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;*
>
> *(ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;*
>
> *(iii) The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally;*
>
> *(iv) In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act;*
>
> *(v) Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;*
>
> *(vi) Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;*

(vii) Merits of the case are not required to be considered in condoning the delay; and

(viii) Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision."

e) ***H. Guruswamy & Ors. Vs. A. Krishnaiah since deceased by Lrs., (Civil Appeal No. 317/2025, decided on 08.01.2025)*** (para no.13)

"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."

f) ***Rajneesh Kumar and another Vs. Ved Prakash, 2024 SCC Online SC 3380*** (para no. 10)

"10. It appears that the entire blame has been thrown on the head of the advocate who was appearing for the petitioners in the trial court. We have noticed over a period of time a tendency on the part of the litigants to blame their lawyers of negligence and carelessness in attending the proceedings before the court. Even if we assume for a moment that the concerned lawyer was careless or negligent, this, by itself, cannot be a ground to condone long and inordinate delay as the litigant owes a duty to be vigilant of his own rights and is expected to be equally vigilant about the judicial proceedings pending in the court initiated at his instance. The litigant, therefore, should not be permitted to throw the entire blame on the head of the

advocate and thereby disown him at any time and seek relief."

g) ***Jan Chetna Jagriti Avom Shaikshanik Vikas Manch and others Vs. Anand Raj Jhawar Sole Proprietor of M/s. RR Agrotech, 2025 SCC Online Del 878*** (para no. 5.2)

> *"5.2 No doubt, for the fault of counsel, the litigant should not be made to suffer. But that cannot be a blanket rule. Each case has to be examined on its peculiar factual matrix. The protection of the said rule, which can in appropriate cases be extended to an illiterate lay person, cannot be extended to an educated litigant or a corporate entity or the government bodies. Merely by engaging a counsel, the litigant cannot claim to be not under a duty to keep track of the case. Most importantly, where the applicant attributing such delay to the professional misconduct of the counsel opts not to take any action against the counsel, his explanation cannot be believed. Condoning delay in such circumstances, believing the bald allegations of the applicant would be tantamount to condemning the erstwhile counsel without hearing him and that too on judicial record."*

9. What may be discerned from the above said decisions of the Hon'ble Supreme Court is that, sufficient cause means that the advocate has given enough reasons for which a party could not be blamed. Fault of the counsel can not be a blanket protection and each case has to examined on its peculiar factual matrix. A right which has been created in favour of one party cannot be taken away when the delay is a direct result of the negligence and inaction of the other party. If there has been no gross negligence or deliberate

inaction or lack of bonafides, a broad and liberal view has to be adopted so as to advance substantive justice.

10. Admittedly, in the present case, the application for temporary injunction filed by the predecessor in-title of the respondents came to be rejected by the Trial Court *vide* order dated 05.10.1996. Thereafter, Misc. Civil Appeal No.515 of 1996 preferred by the predecessor of the respondents came to be dismissed on 18.11.1997. It is also a matter of record that against the decision of the District Judge, Nagpur in the said appeal, the predecessor in-title of the respondents carried the matter to this Court in Civil Revision Application No.529 of 1997. It is nowhere disputed that the counsel for the predecessor of the respondents accepted the copy of reply in the said revision application on 20.07.1998. Whereas, before that date, the predecessor of the respondents had already withdrawn the revision on 06.07.1998. The service of copy of the reply of the predecessor in-title of the appellant and acceptance by the counsel for the original plaintiffs (predecessor in-title of the respondents) supports the contention of the appellants that they were not aware about the withdrawal of the civil revision application by the counsel for the predecessor in-title of the respondents.

11. The First Appellate Court proceeded to reject the application on the ground that, even though the service of the copy has been done on the counsel for the respondent, the counsel has to file the reply in the Court. In such circumstances, the withdrawal of the civil revision application could not remain unrevealed. However, the First Appellate Court failed to consider the fact that it is the case of the appellants that the brother of the predecessor in title of the appellants who was authorized to represent the appellant, shifted to Mumbai and was expected to come before the High Court in due course. Chandrakant Pitale came to Nagpur and after meeting the counsel, he came to know about the withdrawal of the revision on 06.07.1998. It shows that the counsel did not intimate Chandrakant Pitale about withdrawal of the application in the year 1998 itself. There is a difference between adjudication process in the High Court and adjudication process in the Trial Court. In the High Court the parties are not required to attend the cases and mostly no fixed dates are given, unlike the Trial Court. The case of ***Rajneesh Kumar*** (supra) relied upon by the respondent was in respect of the Trial Court's proceedings whereas in the present case, pendency of the proceedings in the High Court is the issue involved. There is nothing on record to suggest that the delay caused in preferring the appeal by the appellant is *mala fide* and intentional. The reason mentioned in

the application for condonation of delay is adequate and enough to explain why the appellants could not prefer the appeal within time; in that scenario, sufficient cause is to be liberally construed.

12. It will be useful to refer to the decision in ***Sheo Raj Singh (Deceased) thru. Legal Representatives and others .vs. Union of India and another, (2023) 10 SCC 531*** wherein, the Supreme Court has observed that 'sufficient cause' should be adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice and should be considered with pragmatism in a justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The length of delay is not always decisive while exercising discretion, if the delay is properly explained.

13. So far as the submissions made by Mr. Ambilwade are concerned, the Bombay High Court in the case of ***Chandrakant Somnath Melge vs. Balasaheb Somnath Melge, 2017 (3) Mh.L.J. 668***, has held that a second appeal would lie against rejection of the application for condonation of delay in preferring the appeal. As held in the case of ***Kumari Sahu*** (supra), even today, it is the ground reality that a considerable proportion of litigants are completely dependant on their counsel, more particularly in the High Court

where the parties are not required to attend the Court unless specifically directed.

14. It is also a settled principle of law that procedure is the handmaid of justice and substantial justice cannot be denied for technical reasons. The First Appellate Court ought to have considered this aspect and should have condoned the delay in preferring the appeal with certain conditions, if required with heavy costs.

15. In view of the above, a case is made out for condonation of delay caused in filing the appeal subject to payment of costs of Rs.25,000/- (Rs. Twenty Five Thousand) to be paid to District Bar Association, Gondia. The substantial question of law framed is answered accordingly. The impugned judgment and decree passed by the First Appellate Court is set aside. The appeal succeeds.

Judgment corrected vide Court's order dated 26.09.2025

(M. W. CHANDWANI, J.)

Tambe.