

MHJG010000262024



Order below Exh.01 in Civil Misc. Appln. 3 of 2024
(Prakash Dalavi V/s. Dipak Mahajan)
(CNRNO-MHJG-01000-26-2024)

ORDER

1) This application is to condone the delay vide Section 5 of the Limitation Act.

2) The case of applicant in brief is that, applicant was arrayed as a defendant in Special Civil Suit No. 3/2016. The respondent of this application was the plaintiff in the said suit. The suit came to be decreed on 18.07.2018 by the Ld. Civil Judge Senior Division, Amalner. Hence this application. Applicant avers that the suit proceeded without written statement. The suit was decreed on the basis of evidence of the respondent vide Exh.15 and his witness vide Exh.22. Applicant proposes to challenge the judgment and decree. The appeal was supposed to be filed on 17.08.2018. However, there is a delay of 1980 days. Thereby, applicant prays to condone the delay. Hence this application.

3) Respondent combats the application by filing say at Exh. 17. According to the respondent, this petition is moved to prolong the execution of decree so that the fruits should not be availed to the respondent. He avers that the respondent has moved execution petition. In that petition, respondent was taking steps for appointment of court commissioner. Applicant has

knowledge and notice of the same. Applicant is having the knowledge of the suit and decree since from 16.03.2020. He has even appeared in the execution proceeding. Applicant commits contempt of the court. Hence he is not entitled to any leniency. The delay is of five years five months and a day. Applicant explains no grounds about the delay. Thereby, respondent prays to reject the application.

4) Heard argument of both the sides. Following points arise for my determination. I record my finding against each of them for the reason thereunder :-

Sr.No.	Point	Finding
1.	Does the applicant shows sufficient cause to condone the delay ?	No.
2.	If so, then what order ?	Application stands allowed.

As to point no.1 and 2 :-

5) These points are intermingled. For the sake of convenience, I discuss them together. The application is supported with an affidavit of the applicant. Applicant places on record the photo-stat copy of the judgment and decree passed in Special Civil Suit No. 3/2016. Neither party has furnished any evidence to support the application or opposition respectively.

6) It is admitted fact that by judgment and decree in the above suit dated 18.07.2018, the Ld. Civil Judge Senior Division, Amalner has decreed the suit in favour of the present respondent. The cause for delay is not explained in the application.

7) Before dealing with the cause of delay, it is necessary to enumerate the latest position. With due verdict in the decision on Hon'ble Apex Court in *State of Madhya Pradesh Vs. Ramkumar Chaoudhary, reported in 2024 Live Law (SC) 953*, litigant seeking to condone delay must explain why appeal was not filed from first day within limitation period. Thus, an explanation of the delay from the period when the limitation ended is not sufficient. Litigant has to explain the reason for which he could not file the appeal before the expiry of limitation period. Furthermore, with due verdict in the ratio of *Basawraj and Another Vs. Special Land and Acquisition Officer*, Hon'ble Apex Court has observed that the applicant has to explain the court the sufficient cause which means an adequate and enough reason which prevented him to approach the court within limitation.

8) Turning to the case in hand, applicant enumerates no reason at all due to which the suit was proceeded without his written statement on his non appearance. The present application seeking condonation for the delay caused is absolutely silent not only in respect to the non appearance and contest of suit by the applicant, but also after decree within limitation or beyond that till the filing of this application. Ld. Counsel for the applicant submits that the reasons mentioned in the appeal are the reasons for delay. However, without condonation of delay, the appeal is not considerable. Hence, I find no substance in the submission made. Applicant does not satisfy with sufficient cause the delay caused to present the appeal.

9) At the outset, no doubt that the delay should be considered with pragmatism in justice oriented system, rather than counting each day of delay at length. However, for consideration of delay, the applicant is bound to explain the plausible reasons for the same. The reasons are nowhere

mentioned in this application. Delay is not of short period. However, the delay is of considerable long period. In such circumstance, I do find substance in the submission made on behalf of the respondent that the applicant is playing tactics and formalities merely to prolong the execution of decree in favour of the respondent. Thus, delay is not explained with sufficient cause. This leads me to hold point no.1 in the negative and pass following for point no.2.

Order

- 1) Application stands dismissed
- 2) No order as to costs.

Date: 30/07/2026

(Mrudula K.S. Kochar)
Additional Sessions Judge,
Amalner
Dist. Jalgaon.