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|---------------|---|-------------------|
| Presented on  | : | 28/07/2025        |
| Registered on | : | 06/08/2025        |
| Decided on    | : | 06/07/2026        |
| Duration      | : | Y M D<br>00 11 08 |

CNR No.MHCA010001152025

Exh.17

THE MAHARASHTRA STATE CO-OPERATIVE APPELLATE COURT,  
MUMBAI

(Before A. S. Wanve, Member-2)

**M.A. No.36 of 2025**

Umesh Govind Panwalkar  
Age: 51 years, Occ.: Business,  
R/at: Flat No.1004, 10<sup>th</sup> Floor,  
Hiranya Co-operative Housing Society Ltd.,  
D.L. Vaidya Road, Dadar (W.),  
Mumbai-400 028  
Presently residing at:  
A/202, Sannidhi Park CHS Ltd.,  
Hari Om Nagar, Mulund (East),  
Mumbai-400 081

... Applicant  
(Org. Disputant)

**VERSUS**

1. Hiranya Co-operative Housing Society Ltd.,  
D.L. Vaidya Road, Dadar (W.),  
Mumbai-400 028
2. Shri. Nilesh Govind Panwalkar  
Age: 50 years,
3. Mrs. Vaishali Nilesh Panwalkar  
Age: 48 years
4. Miss. Mrunmayee Nilesh Panwalkar  
Age: 22 years,  
Respondent Nos.2 to 4 are r/at:  
Flat No.1004, 10<sup>th</sup> Floor, 165, Junction of  
D.L. Vaidya Road, Ram Maruti Road,  
Dadar (W.), Mumbai-400 028

... Respondents  
(Org. Opponents)

**Appearance:**

Ld. Advocate Shri. Mahindra Agvekar for Applicant.  
Ld. Advocate Shri. Bhushan Joshi for Respondent No.1.  
Ld. Advocate Mr. Devmani Shukla for Respondent Nos.2 and 4.

**ORDER BELOW EXH.1**

(Dictated and pronounced on 6<sup>th</sup> July, 2026)

1) Being aggrieved and dissatisfied by the impugned order dated 04/02/2025 passed below Exh.5 by the Ld. Judge, Co-operative Court No.III, Mumbai in dispute bearing No.CC/III/14/2024, present applicant/ original disputant intend to prefer appeal and delay is caused to file the appeal. Therefore, present application for condonation of delay is filed.

2) Reason for delay as mentioned in the application is that, order is passed on 04/02/2025, Applicant filed application for certified copy on 20/03/2025 and certified copy was received on 02/04/2025. Applicant state that time took to consult the lawyer about filing appeal. Also due to family emergencies, other compelling personal circumstances and court summer vacation, applicant could not file the appeal within limitation. This cause delay of 100 days. Delay is neither intentional nor deliberate but occurred due to circumstances beyond the control of the applicant. Therefore, delay be condoned.

3) Show cause notice of this application is duly served to the respondents.

4) Respondent No.1 society appeared through advocate and filed reply vide Exh.10 and strongly objected the application on the ground that applicant took couple of months to obtain the certified copy of the impugned order. There is no plausible justification made by the application. The reasons mentioned in the application are flimsy and

vague. Almost 45 days of delay between the date of obtaining certified copy and start of summer vacation of court is completely unexplained by the applicant. Hence, there is no reason or ground for condoning the delay. Therefore, present application be dismissed with cost.

5) Opponent No.2 and 4 appeared through the advocate. Opponent No.2 has strongly objected the delay condonation application by filing his reply at Exh.14 on the ground that the reason for delay is vague and general in nature and no supporting documents are annexed to the application. Day to day is not explained by the applicant. There are various litigation are pending between the applicant and respondent Nos.2 to 4 before various Hon'ble Courts in Mumbai as well as before the Hon'ble Bombay High Court. The advocate for the applicant is appeared along with applicant in most of the matters before the various Courts. It is incorrect to say that the applicant could not get time to consult his lawyer about filing of the Appeal before this Court. Opponent No.,2 relied upon the roznama of various Courts at Mumbai which shows that the applicant had made false and incorrect statement on oath in the present application. The applicant failed to made out prima facie averment which shows there is sufficient cause for not filing appeal within limitation.

6) Ld. Advocate for Applicant has filed written arguments at Exh.16. I gone through the written argument. Ld. Advocate for applicant has also relied upon the ratio laid down by Hon'ble Apex Court in the case of Collector Land Acquisition Anantnag and others Vs. Mst. Katiji and

others reported in (1987) 2 Supreme Court Cases 107 wherein, the Hon'ble Apex Court observed that *"liberal approach is to be adopted while considering the application for condonation of delay and refusing to condone the delay can result in meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties."*

7) Heard Ld. Advocate Shri. Bhushan Joshi for Respondent No.1 and Ld. Advocate Mr. Devmani Shukla for Respondent Nos.2 and 4, at length

8) Considering the contents of the application and after hearing the arguments of both sides, following points arose for my determination and I give my findings thereon for the reasons recorded below.

| <b><u>S.NO.</u></b> | <b><u>POINTS</u></b>                                                               | <b><u>FINDINGS</u></b>  |
|---------------------|------------------------------------------------------------------------------------|-------------------------|
| 1.                  | Do the applicant has sufficient cause for not filing the Appeal within limitation? | ... In the affirmative. |
| 2.                  | What order?                                                                        | ... As per final order  |

### **REASONS**

9) The applicant has filed the additional affidavit at Exh.15 to place on record certain additional facts and documents. In the additional affidavit, the applicant stated that he has filed written arguments before the Ld. Trial Court on 18/09/2024. Thereafter, the dispute was adjourned for written arguments of opponents. On 21/11/2024 written argument was filed by opponent No.1. Opponent Nos.2 to 4 did not

advance any submissions therefore, the matter was closed for order and fixed on 03/01/2025 and after several adjournments, Ld. Trial Court has pronounced the order on 03/01/2025 and next date was fixed on 04/02/2025. After passing of the impugned order by Ld. Trial Court, the advocate who was conducting the matter before the Ld. Trial Court has passed away. The exact date of the death of the advocate is not within knowledge of the applicant. Therefore, the delay is caused to take the further steps and consult the present advocate and to take the legal opinion. Also, there is medical emergency in the family of the applicant due to which applicant was unable to arrange the funds.

10) There is no any counter affidavit filed by the respondents to deny or object the additional facts stated by the applicant in additional affidavit Exh.15.

11) The reason mentioned by the applicant for the delay is that, death of advocate who was representing him before the Ld. Trial Court and time was took to consult the lawyer about filing appeal. Also due to family emergencies, other compelling personal circumstances and court summer vacation, applicant could not file the appeal within limitation. In my view, these reasons are sufficient reasons for not filing appeal within limitation.

12) This is the first statutory appeal and by filing the appeal after period of limitation, applicant has not taken any benefit of the impugned order. Therefore, in the interest of justice and to decide the controversy between the parties finally on merit, it is necessary to

condone the delay. The reasons mentioned in the application are sufficient reasons for not filing the appeal within limitation but it is duty of the parties to stick to the timeline. Hence, it is necessary to impose cost in token upon the applicant and to pay it to the respondents for the hardship caused to them.

13) In view of above discussion, I answer point No.1 in the affirmative and in answer to point No.2, I proceed to pass following order:

**ORDER**

1. M.A. No.36 of 2025 is allowed.
2. Delay caused to file Appeal against order dated 04/02/2025 below Exh.5 passed by the Ld. Judge, Co-operative Court No.III, Mumbai in dispute No. CC/III/14/2024, is condoned.
3. Applicant is directed to pay Rs.1,000/- (Rupees One Thousand only) as cost each to the Respondent No.1 and Respondent No.2, within 15 days from the date of this order.
4. It is made clear that if cost as per clause (3) of this order is not paid within time, then this application will be presumed to be rejected.
5. Registrar is directed to register the Appeal after compliance of cost.

Mumbai  
6<sup>th</sup> July, 2026

(A. S. Wanve)  
Member-2,  
Mah. State Co-operative Appellate Court,  
Mumbai

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL  
SIGNED JUDGMENT /ORDER.”

06/07/2026  
UPLOAD DATE

(A. S. SAWANT)  
NAME OF STENOGRAPHER

|                                         |                                           |
|-----------------------------------------|-------------------------------------------|
| Name of the Judge (with Court Room No.) | Shri. A. S. Wanve (C.R. No.2)<br>Member-2 |
| Date of pronouncement of Judgment/Order | 06/07/2026                                |
| Order signed by P.O. on                 | 06/07/2026                                |
| Order uploaded on                       | 06/07/2026                                |