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CNR No.MHCA010002392025

Exh No.14

THE MAHARASHTRA STATE CO-OPERATIVE APPELLATE COURT
AT MUMBAI
(Before Sau. S.S. Sapatnekar, President)

M.A. NO.64 OF 2025

(Arising out of Order dated 12/06/2025 passed by Ld Incharge Judge, Co-operative Court No.1, Mumbai below Exh.5 in Dispute No.CC/438/2023)

Hubtown Viva Premises Co-operative
Society Ltd., Situated at CTS No.330(pt),
Village Mogra Shankarwadi,
Jogeshwari (E), Mumbai 400 060.

... Applicant
(Orig. Opponent No.1)

VERSUS

1. Mr. Jatin Hiroo Badlani
Unit Nos.G/4 and G/5, Hubtown Viva
Premises Co-operative Society Ltd.,
Jogeshwari (E), Mumbai 400 060.

... Respondent No.1
(Orig. Disputant)

2. Wellgroomed Venture,
i) Akruti Trade Center, Room No.7,
Marol MIDC, Andheri (E),
Mumbai 400 093.
ii) 2/C, 2nd Floor, Bhandoor Manzil,
Store Lane, Fort, Mumbai 400 001.

... Respondent No.2
(Orig. Opponent No.1)

Shri A.R. Pathak, Advocate for Applicant.

Ms Shabnam S. Indorewala, Advocate for Respondent No.1.

M/s. MDP Legal, Advocate for Respondent No.2.

J U D G M E N T
(19th June, 2026)

1) This is an application filed for condonation of delay which is caused in filing the A.O. The applicant has challenged the order passed by Co-operative Court No.1, Mumbai dated 12/06/2025 below interim application Exh.5 filed in Dispute No.CC/IV/414/2023. The original opponent No.1 is the applicant and the original disputant and opponent No.2 are the respondents.

2) The impugned order below Exh.5 was passed on 12/06/2025. The application for getting certified copy came to be filed on 29/07/2025 and same was received on 07/08/2025. The applicant initially relied on the informal copy of the order for internal review and resolution purpose. However, their advocate advised them to obtain a certified copy for drafting appeal. Hence, they applied for certified copy on 29/07/2025 and received on 07/08/2025. The delay in applying for the certified copy was not deliberate but arose from procedural caution. It is further submitted that applicant is a large co-operative housing society, procedural formalities like obtaining approvals, resolutions from managing committee and relevant authorities were necessary before filing of the appeal. There were unavoidable administrative delay in preparing the appeal documents. The appeal involves complex factual data and reviewing voluminous record which required proper time and consultation with legal advisers. The applicant has acted bonafide and there is no deliberate negligence on his

part. The delay is not willful and if the same is condoned, no prejudice or hardship will be caused to the respondent and it is not condoned, then applicant will be put to loss and greater hardship. There is delay of 87 days in filing the appeal. The applicant has good case in the appeal. And on these grounds applicant prayed to condone the delay which is caused in filing the appeal.

3) In support of application for condonation of delay, the applicant has filed its affidavit.

4) The respondent No.1 filed say at Exh.11 and resisted the application. It is submitted that there is error and mistake in calculating the number of days delay. Application is suffering from malafides. There is overwriting in the application regarding the period of delay. There is delay of 126 days in filing the appeal. The application for getting certified copy came to be filed after 45 days from the date of order. There is no sufficient cause explaining the delay. Only to harass the disputant, delay application is filed. There is intentional negligence, inaction and lack of bonafide on the part of applicant. The applicant cannot take the advantage of his own wrongs and lapses. The application is not supported with any documents and needs to be dismissed. If the delay is condoned, the applicant will suffer grave prejudice and irreparable loss to their legal rights of parking granted to them by the Court. On these grounds, they prayed to dismiss the application.

5) The respondent No.2 filed say at Exh.12 and resisted the application. It is alleged that applicant has failed to give sufficient cause for the delay. There is a deliberate and negligent approach by the applicant. The applicant despite being aware of the order of the Court, did not apply for the certified copy till 29/07/2025. The grounds of procedural caution and internal review is legally untenable. Applicant has failed to provide the names of the officers, the nature of illness or medical certificate to support the claim. It is a settled principle of law that internal administrative friction or the slow movement of files within a co-operative society does not grant it a special status to bypass the law of limitation. The applicant despite of having informal copy of the order failed to file appeal within statutory limitation. Even after getting the certified copy on 07/08/2025 the applicant waited till 06/10/2025 to finalise the application and until 16/10/2025 for final notarization. This secondary delay of over than two months shows lack of negligence on the part of applicant. On these grounds they have prayed to dismiss the application.

6) Following points arise for my consideration and my findings with reasons are as follows:

	<u>POINTS</u>	<u>FINDINGS</u>
1.	Does the applicant prove sufficient cause for not preferring the appeal within the limitation period ?	... In the Affirmative

2.	Is it necessary to condone the delay which is caused in filing the appeal ?	... In the Affirmative
3.	What order?	... As per final order

R E A S O N S

7) Heard the Ld Advocate for the applicant and Ld Advocate for the respondents.

8) The Ld Advocate for applicant submitted that due to procedural lapses, delay has been caused which is not intentional and he prayed to condone it.

9) On the other hand, the Ld Advocate for respondent No.1 submitted that the arguments advanced on behalf of applicant are not matching with pleadings. There is no sufficient ground pointed out by the applicant to condone the delay. She referred the application and submitted that period of delay has been counted differently at different places. Application is frivolous. She has also submitted that first information report is filed against the secretary of the society as he misbehaved with some lady members of the society. She prayed to reject the application.

10) Ld Advocate for respondent No.2 reiterated that applicant failed to bring sufficient cause for condoning the delay. There was a delay for applying the certified copy and applicant was not vigilant. She prayed to reject the application.

As to Point Nos.1 & 2 :-

11) According to the applicant, they are having the informal copy of the impugned order with them, but as their advocate advised to obtain certified copy, they filed an application for the same on 29/07/2025 and received the same on 07/08/2025. It is also submitted that being a co-operative housing society, procedural formalities including obtaining approvals and resolutions from managing committee and relevant authorities were necessary before filing appeal and due to administrative latches delay has been caused. At this juncture, it is necessary to consider the precedent of Hon'ble Apex Court in the case of **Collector, Land Acquisition, Anantnag and Ors. Vs. Katiji and Ors., reported in AIR 1987 SC 1353**, Hon'ble Apex Court has laid down certain guidelines for considering the delay application. The Hon'ble Apex Court has laid down following principles for condoning the delay :

3. *“Every day's delay must be explained” does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.*

4. *When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.*

5. *There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A*

litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.”

12) It is well settled rule of law that while condoning the delay, liberal approach is required to be taken. Hon’ble Apex Court and Parent High Court has laid down in catena of cases that justice should not be denied on technical grounds. The delay in present case is of a short period and so as to decide the appeal on merits and to give a fair chance to applicant to contest his appeal on merits, it is necessary to condone the delay. Accordingly, I answer Point Nos.1 and 2 in the affirmative.

13) Ld Advocate for respondents relied upon the case law between **Union of India & Anr. Vs. Jahangir Byramji Jeejeebhoy (D) Through his LR**. In the said case, the respondent has filed a Civil Suit bearing No.2599/1981 before the Court of 4th Additional Small Causes Judge, Pune for recovery of possession of the suit property and arrears towards the rent against appellant Union of India (who was defendant in the said suit). The said suit came to be decreed by the Trial Court. The appellant Union of India filed appeal in the District Court, Pune which came to be dismissed. Against the said judgment & decree the appellant went before Hon’ble High Court of Judicature at Bombay in Writ Petition No.2307/1993. The said writ petition came to be dismissed in default on 10/10/2006. Thereafter, plaintiff filed

execution petition for executing judgment & decree passed by the Trial Court. After receipt of the notice of the said execution petition, appellant/original defendant preferred Civil Application No.1294/2019 seeking restoration of Writ Petition No.2307/1993. On 09/07/2019 Hon'ble High Court declined to condone the delay of 12 years and 158 days in filing the restoration application. The Hon'ble Apex Court confirmed the said order and dismissed the Civil Appeal arising out of S.L.P. (Civil) No.21096/2019. In the same case, there was inordinate delay of 12 years and 158 days and hence, the Apex Court pleased to dismiss the S.L.P. In the present case in hand, the delay is of a shorter period and hence, the precedent laid down by the Hon'ble Apex Court in the said case does not apply to the facts of the case in hand.

14) Hence, I proceed to pass the following order :-

ORDER

1. The delay condonation application is allowed subject to cost of Rs.1,000/- (Rupees One Thousand only) to be paid by the applicant in the PLA Account of this Court, as a condition precedent, on or before 10/07/2026.
2. After payment of the cost by the applicant, the office is directed to register the A.O.

Mumbai
19th June, 2026

(**Sau. S.S. Sapatnekar**)
President,
Mh.State Co-operative Appellate Court,
Mumbai

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

19.06.2026
UPLOAD DATE

(D.D. Desai)
NAME OF STENOGRAPHER

Name of the Judge (with Court Room No.)	Sau. S.S. Sapatnekar (C.R. No.1) President
Date of pronouncement of Judgment/Order	19.06.2026
Order signed by P.O. on	19.06.2026
Order uploaded on	19.06.2026