

MHKO160001132011



Civil Misc. Application No. 14 of 2011
(Arising out of Regular Civil Suit No. 47 of 2009)

IN THE COURT OF THE CIVIL JUDGE JUNIOR DIVISION,
MALKAPUR-SHAHUWADI AT SHAHUWADI

- 1) Bhagawan Mahipati Patil,
- 2) Sadashiv Mahipati Patil,
- 3) Tatyaso Bali Patil, *... Applicants (Original Plaintiffs)*

V/s

- 1) Tukaram Krishna Patil,
- 2) Pandurang Krishna Patil,
- 3) Smt. Girjabai Krishna Patil & ors,.....*Respondents (Original Defendants)*

Appearance :

Adv. S.A. Lad Ld. Advocate for the Applicants.

Adv. D.B. Shirke Ld. Advocate for Respondent Nos. 1 to 3.

ORDER BELOW EXHIBIT 1

(Delivered on this 5th day of August, 2026)

1. This is an application for condonation of delay of 357 days occasioned in filing the application for restoration of Regular Civil Suit No. 47/2009, which came to be dismissed in default on 26/03/2010. The

applicants are the original plaintiffs and the respondents are the original defendants in the said suit.

2. Briefly, the case of the applicants is that R.C.S. No. 47/2009 was instituted by them for partition and injunction. After notice to the defendants interim reliefs came to be granted, and the matter was proceeded with. It is stated that, in the absence of the Ld. Advocate for the applicants, an application for adjournment moved on their behalf came to be rejected, the interim orders were vacated, and the interim application was thereafter partly allowed, the prayer relating to the properties of the Maharaj being rejected. Against the said order the applicants preferred an appeal before the District Court, which was partly allowed. The respondents in turn preferred Writ Petition No. 4289/2008 before the Hon'ble High Court of Bombay, wherein status quo with respect to the suit property was ordered, and simultaneously certain revenue proceedings are also stated to have been pending during the same period. The applicants further plead that they are agriculturists, unlettered and ignorant of court procedure; that they lost track of the matter and could not remain in contact with their advocate; that one of them met with a serious accident on 26/03/2010 and remained hospitalised for months together; that they were under the impression that the proceedings before this Court would be taken up only after the decision of the writ petition; and that on learning of the order of dismissal they applied for and obtained the certified copy and immediately preferred the present application. On these grounds they pray that the delay of 357 days be condoned.

3. The respondents (original defendant Nos. 1 to 3) have filed their say at Exhibit 5 and denied the contentions of the applicants. It is contended that the application is not maintainable in law; that no specific and satisfactory reasons for the delay have been pleaded; that the suit came to be dismissed on account of the frequent absence of the applicants and their non-compliance with the orders of the Court; that the applicants have no valid cause of action or sufficient explanation for the delay; and that the application, being belated and lacking in bona fides, deserves to be rejected with costs.

4. I have heard the Ld. Advocates for both sides and perused the record. The following point that arises for my determination; for the reasons that follow, I have recorded my finding accordingly;

Sr. No.	Point	Finding
1	Whether the applicants have shown sufficient cause within the meaning of law for condoning the delay of 357 days in preferring the restoration application?	NO
2	What order	Application is rejected

REASONS

As to point No. 1 and 2

5. It transpires from the record that R.C.S. No. 47/2009, filed for partition and injunction, came to be dismissed in default on 26/03/2010

on account of the absence of the plaintiffs and their non-compliance with the orders of the Court, and that a reasonable opportunity had been afforded to the plaintiffs before the suit was so dismissed. The dismissal was therefore not for any lapse attributable to the Court, but was the direct consequence of the conduct of the applicants themselves.

6. The reasons pressed in support of condonation do not bear scrutiny. The pendency of the appeal before the Hon'ble District Court, or pendency of writ petition before the Hon'ble High Court, and of the revenue proceedings is in no manner connected with the applicants' obligation to proceed with the suit before this Court. It is well settled that the pendency of proceedings before the appellate or superior forums cannot furnish a ground for remaining absent before the trial court, more so where no order of stay or status quo operated to restrain the trial court from proceeding with the suit. No such order restraining these proceedings has been shown to exist. The plea that the applicants were under an impression that this Court would await the outcome of the writ petition is, in these circumstances, wholly unfounded and cannot constitute sufficient cause.

7. The plea of accident and hospitalisation is equally unavailing. Apart from being wholly unsubstantiated by any medical or other material on record, it is confined to one of the applicants and, at its highest, could account only for a limited period; it does not explain the entire period of 357 days, nor does it explain the continued inaction of the remaining applicants. The delay has thus not been explained day-to-day, or even

substantially, and the reasons assigned are vague, general and unrelated to the proceedings before this Court.

8. The conduct of the applicants after institution of the present application reinforces this conclusion. The application has remained pending for a considerable length of time and was itself kept for dismissal on several occasions owing to the absence of the applicants. Instead of pressing this application for condonation of delay, the applicants chose to move various applications pertaining to injunction reliefs which were not even maintainable unless and until the delay was condoned and the original suit restored. Such conduct is destructive of any plea of bona fides or diligence and is consistent only with the want of the vigilance which the law expects of a party seeking the leniency of the Court.

9. Upon a conspectus of the above, the grounds urged for condonation of delay are neither satisfactory nor supported by any acceptable material, and the delay of 357 days remains unexplained. The applicants have failed to make out sufficient cause. The application is therefore devoid of merit and is liable to be rejected. Accordingly, I proceed to pass the following order.

ORDER

- 1) The application (Exhibit 1) for condonation of delay stands rejected.
- 2) The proceedings stand closed.

Date : 05/08/2026

(P. B. Pawar)
Civil Judge, Jr. Division
Malakapur-Shahuwadi.