

**Order below Exh. 263 in R.C.S.No.96/2013**

Sushila Pangare &amp; Ors. Vs. Mahesh Gurav &amp; Ors.

(Passed on 10/10/2025)

1. The plaintiff has filed the present application seeking condonation of delay in filing the review petition.
  
2. The plaintiff submits that a suit for declaration, injunction, and partition was filed against the defendants and is presently fixed for the plaintiff's evidence. Out of the witnesses listed by the plaintiff, witnesses Nos. 1 to 4 have already been examined. However, it became necessary in the interest of justice to examine additional witnesses beyond those mentioned in the original witness list. Accordingly, on 06/01/2022, the plaintiff filed an application (Exh. 250) seeking permission to examine Plaintiff No. 3 as a witness along with his affidavit in evidence and relevant original documents. The said application (Exh. 250) was rejected by the Court. Being aggrieved by the said order, which, according to the plaintiff, suffers from apparent error on the face of record, the plaintiff filed a review application on 04/11/2022.
  
3. The plaintiff further states that although Plaintiff No. 4 is an advocate by profession, a new counsel was engaged for the further conduct of the matter. Upon a detailed examination of the record, including the order below Exh. 250 and the defendants' reply, the newly appointed advocate found that the said order contained a clear error, resulting in grave injustice to the plaintiff by depriving them of an opportunity to lead material evidence. Acting upon legal advice, the plaintiff filed the review application and submitted the

supporting affidavit, list, and original documents along with it. The plaintiff further submits that the application and accompanying documents are interrelated and must be considered together. Though the order below Exh. 250 was passed, the documents forming part of that application remain pending for hearing; hence, the process cannot be said to be concluded. Therefore, the review petition was filed within a reasonable time and without any actual delay.

4. Nevertheless, to avoid any technical objection, the plaintiff has filed the present application seeking condonation of delay. The delay amounts to 171 days, which occurred solely due to the engagement of a new counsel and was not deliberate or intentional. The review petition was filed immediately after obtaining legal advice from the newly appointed advocate. The plaintiff asserts that no prejudice or loss would be caused to the defendants if the delay is condoned; rather, it would aid the Court in adjudicating the matter on merits. Conversely, if the delay is not condoned, the plaintiff would be deprived of the opportunity to adduce necessary evidence, thereby resulting in denial of justice. Accordingly, the plaintiff prays to condone the delay of 171 days in filing the review application.

5. The defendant No. 5, 8 to 13 have failed to file their say despite sufficient opportunities are given to them. Hence, application proceeded without their say. The defendant Nos. 6 and 7 have filed their say at Exh.69 opposing the application. It is contended that the application is misconceived, devoid of merit, dishonest, and legally

untenable. It is an afterthought intended to cover up the plaintiff's lapses, and therefore, it deserves outright rejection.

6. They further assert that the application Exh. 263 is false, and merely a repetition of the earlier application Exh. 260, with minor alterations. The defendants have already filed their detailed reply to Exh. 260 on 06/01/2023 (Exh. 255), and they request that the said reply be read as an integral part of the present response to avoid unnecessary repetition. The defendants further submit that the plaintiff ought to have filed the application for condonation of delay simultaneously with the review application on 04/11/2022. However, the plaintiff belatedly filed the present application only on 03/12/2022. When the review application (Exh. 260) was filed, the advocate for the defendants had immediately pointed out before the Court that the said review application was barred by limitation. Only thereafter, and to fill this procedural lacuna, the plaintiff filed the present application for condonation of delay. The defendants allege that this is a deliberate attempt by the plaintiff to take undue advantage of his own negligence.

7. It is further contended that the plaintiff has made inconsistent and contradictory statements in the applications Exh. 260 and Exh. 263. In both, the plaintiff has repeatedly claimed that no delay occurred in filing the review application. Yet, in Exh. 263, the plaintiff has simultaneously pleaded that the delay condonation application, though prepared earlier, was not filed due to inadvertence. According to the defendants, such contradictions

clearly show that the present application has been filed merely to rectify defects and cover up procedural omissions. They submit that no sufficient or bona fide reason has been shown to justify the condonation of delay. The application, according to them, is mala fide, shows gross negligence, and lacks due diligence. Hence, prayed to reject the application with costs.

8. I have heard both parties and perused the record. The following points arise for my determination:

Sr. No.	Points	Findings
1)	Whether the plaintiffs have shown "sufficient cause" within the meaning of Section 5 of the Limitation Act, 1963, to condone the delay of 171 days in filing the review petition?	In the negative.
2)	What order ?	As per final order.

**:: REASONS ::**

**As to Point No. 1 and 2 :**

9. The record reveals that the main suit is for declaration, partition, and injunction, presently fixed for plaintiffs' evidence. Out of the witnesses listed earlier, witnesses Nos. 1 to 4 have already been examined. The plaintiff thereafter filed Exh. 250 seeking permission to examine Plaintiff No. 3 with documents, which was rejected. The plaintiff seeks to review that order by filing Exh. 260, accompanied later by Exh. 263 seeking condonation of delay. The delay of 171 days is not inordinate. The explanation offered is that after rejection of Exh. 250, a new counsel was engaged, and only

upon perusal of record and obtaining legal opinion, the plaintiff was advised to file a review petition. The cause shown — delay due to change of counsel and legal advice — though not a strong ground by itself, is recognized as a sufficient cause if not tainted by mala fides or negligence.

10. The Ld. Advocate for plaintiff had relied upon the judgment of the **Hon'ble Supreme Court in Indersing vs. State of Madhya Pradesh, [SLP (Civil) No. 6145 of 2024]**, wherein the Apex Court reiterated that *technical delay should not defeat substantive justice* and that *the court must adopt a liberal and justice-oriented approach while considering applications for condonation of delay, particularly when the explanation offered is plausible and does not disclose mala fides or gross negligence*. The Supreme Court further observed that the purpose of limitation law is not to destroy rights but to ensure diligence, and where delay occurs due to procedural or bona fide reasons, courts must lean in favour of adjudication on merits rather than dismissal on technical grounds.

11. In the present case, the conduct of the plaintiff does not indicate deliberate negligence. The record shows that the review application was filed promptly after legal advice was received. The filing of the present delay condonation application immediately after defendants' objection cannot be treated as mala fide; it rather shows a cautious and corrective approach. The plaintiff's explanation that the condonation application was prepared but inadvertently not filed earlier appears plausible and bona fide.

12. The contention of defendants that contradictory statements exist in the two applications is not sufficient to deny relief under Section 5. The Court is concerned with the substance of the explanation, not mere wording. Further, no material prejudice has been shown to have been caused to the defendants by condoning the delay. Conversely, refusal would prevent the Court from examining the alleged error in the earlier order and might result in miscarriage of justice. In view of the above legal position and applying the principles laid down in *Indersing* (supra), I find that the plaintiffs have shown sufficient cause for condonation. The delay of 171 days appears to be neither deliberate nor mala fide but caused due to bona fide procedural circumstances and change of counsel. Hence, I answer point no. 1 in affirmative and in view of the point No. 2 I pass following order -

**ORDER**

1. Application at Exh.263 is allowed subject to cost of Rs. 1500/- [Rupees One Thousand and Five Hundred only ] to be deposited to Legal Aid, Bhor on or before next date.
2. The delay of 171 days in filing the review petition (Exh. 260) is hereby condoned.
3. The review application (Exh. 260) be registered and heard on merits in accordance with law.

Place - Bhor  
Date – 10/10/2025

(Smt. Meena W. Jadhav)  
Jt.Civil Judge Jr.Division,  
Bhor.

**CERTIFICATE**

I affirms that the contents of this P. D. F. file order are same word for word as per original order.

Name of the Court :- Hon'ble Smt. Meena W. Jadhav  
C.J.J.D. & J.M.F.C., Bhor, Pune

Name of the Steno :- M. S. Kondhare L.G.

Date of Order :- 10/10/2025

Signed by P.O. :- 10/10/2025

Order uploaded on :- 10/10/2025