

MHTH170014852015



ORDER BELOW EXHIBIT 1 IN Civil M.A. NO.1700047/2015
(Smt. Meenakshi Naik Vs Maharashtra State Electricity Transmission
Co. Ltd. through Shri. J.V. Kamat and another)

1. Present Application is preferred for condonation of delay in setting aside delay of 1817 days in filing application for restoration of RCS No. 46/2007. It is further prayed that order dated 06.10.2010 passed by this Court (Ld. Predecessor) *vide* Order 9 Rule 4 of the Code of Civil Procedure be set aside/recalled and the original suit be restored.

2. It is submitted that, the present application is filed to the constituted attorney of the applicant/Plaintiff. That summons was issued *vide* order dated 15.03.2007. *Ex parte* status quo order dated 02.03.2007 was passed below Exh.5 in the favour of the Plaintiff. Defendant appeared and after hearing, interim application (Exh.5) was rejected *vide* order dated 04.05.2007. Misc. Civil Appeal was preferred against the said order and the said appeal came to be dismissed. The Plaintiff is a senior citizen, she appeared on 29.03.2007. The concerned Court was busy in recording evidence in another case on 04.09.2009 and 06.10.2009. Case was adjourned to 31.10.2009. Evidence was recorded on 04.02.2009, case was adjourned for framing of issues. Issues were framed on 31.10.2009. Case was adjourned for filing of affidavit of evidence of the Plaintiff. The Plaintiff alongwith her son arrived late due to traffic/heavy rain/ill health. That Plaintiff resides at Borivali which is at least 120 km away from this Court. Plaintiff is illiterate she was represented by her

Advocate. Not being well versed with procedural aspects, she was under the impression that Advocate will inform her. That the roznama reflects that on 06.10.2010 the impugned order was passed citing that evidence is not led despite passage of a year and Advocate Shri.Sawale informed that the Plaintiff is not in contact and hence the suit came to be dismissed *vide* Order 9 Rule 3 of CPC. That, Plaintiff is not keeping well since more than ten years (as of 2015) and was medically indisposed and unable to travel, her eyes were affected. Since her son was making arrangement for enabling her to attend Court and since personal presence was not required, Plaintiff and her son moved back to Borivali (Mumbai). There was a misunderstanding/misconception that Plaintiff was not in touch with her Advocate. She was not aware of dismissal order till she attended the office of Collector, Palghar regarding different cause of action as regards same property. When the current Advocate enquired about the suit, Plaintiff's son approached the Advocate who could not be contacted. Thereafter, the present Advocate applied for certified copy on 21.08.2015. Certified copies were handed over on 26.08.2015. That, the time period of 30 days from receipt of certified copies may kindly be considered. The Plaintiff and her son were not aware of the status of the case. She was also suffering from paralysis and later suffered brain stroke and other aged related ailments. Her son contacted the current Advocate. Upon gathering information present application was filed on 29.09.2015 alongwith application for restoration of suit. No harm will be caused to the Defendant if the application is allowed. The Plaintiff will suffer if present application is rejected. Plaintiff has relied upon the judgment of the Hon'ble Bombay High Court in *Vijaykumar Shriram Zanwar Vs. Sharad*

Ramchandra Vaidya [2015 ALL MR (Cri) 756]. Hence, it is prayed that the delay may kindly be condoned.

3. *Per contra*, the present application is vehemently opposed by the Non-applicant Defendant. *Vide* say at Exh.20 it is submitted that the suit RCS No.47/2007 came to filed on 02.03.2007. The interim application came to be rejected on 04.05.2007. The appeal against that order was also rejected. Issues were framed on 31.10.2009. Since evidence was not adduced suit came to be dismissed in default on 06.10.2010. The Plaintiff has preferred the present application through her son Kamlesh Dinesh Naik. She had executed power of attorney dated 09.11.2010 in his favour regarding handling litigation as on 09.11.2010 which means that she was well aware of the status of the litigation. Plaintiff or her son did not take any steps to set aside the order in appeal. She could have filed the present application to her son. She has not even examined herself in support of the present application. Her constituted attorney/son was and has been handling the dispute. He examined himself in support of the present application. Despite giving the power of attorney and filing the present application through her son, the Plaintiff is claiming her health reasons. The delay is not justified. Sufficient cause is not shown for delay and hence application deserves to be rejected.

4. Based on the aforesaid, the following points arise:-

Sr.No.	Points of determination	Findings
(I)	Whether the Plaintiff has proved that the delay for filing application for restoration of suit deserves to be condoned?	...No.
(II)	What order?	...As per final order

REASONS

5. Perused record, heard Ld. Advocates for both sides. Even though there is another prayer for setting aside the impugned order dismissing the suit and allowing restoration of the suit, the prayer regarding condonation of delay has to be considered first.

6. Chapter 19 of the Civil Manual postulates judicial enquiry for applications under Section 5 of the Limitation Act for condonation of delay. At Exh.44 evidence closure pursis is submitted by the Plaintiff. Evidence Affidavit (Exh.21) is submitted of PW-1 son/ Constituted Attorney of the Plaintiff. He has reiterated the averments of the application. In his cross-examination it is brought out that said PW-1 C.A. i.e. son of Plaintiff is aware of the facts and he resides with his mother. The power of attorney in his favour was prepared through a notary in Borivali. His brother, sister and mother were present at that time. It is brought out that the doctor was not examined to prove the medical papers. That, PW-1 was not empowered to depose in the case. PW-1 as voluntarily stated that he was taking care of his mother. He has admitted that, his mother the Plaintiff was capable of looking after the litigation before and after the year 2010.

7. The second witness Shri.Akhileshwar Jha (Exh.35) is one of the hospital staff who has identified the medical paper/discharge summary (Exh.36) of the Plaintiff. He has stated the contents of that report are correct. It mentions the date of admission is 03.02.2015 and date of discharge is 09.02.2015.

8. The judgment of *Vijaykumar (supra)* relied upon, deals with criminal case where there was delay of 1410 days and the reasons therein were found to be sufficient by the Hon'ble Bombay

High Court in its writ jurisdiction. The observations made therein are most reverentially noted. However, the facts of the present case are distinguished on behalf of the Defendant.

9. The present case and this Court has to rely upon the Section 5 of the Limitation Act. Section 5 of the Limitation Act states that, any application may be admitted after the prescribed period of limitation, if the applicant satisfies the Court that there is a sufficient cause for not making the application. Sufficient cause is expected to be interpreted and applied in a manner which serves the end of justice, a party resorting to delay runs the risk of failure of litigation.

10. Article 122 of the Schedule to the Limitation Act states that, an application for restoration of a suit dismissed for default of appearance or for want of prosecution has be filed within 30 (thirty) days of the date of dismissal. The timeline becomes important. The suit was filed in 2007. After interim application came to be rejected in May 2007, appeal was pending. Appeal came to be dismissed. The issues were framed on 31.10.2009. Since evidence was not adduced suit came to be default on 06.10.2010 i.e. after a period of almost a year due to the absence of the Plaintiff. The power of attorney submitted on record (alongwith Exh.34) was also executed on 09.11.2010. In the present case, the application for setting aside dismissal order should have been filed by 05.11.2010. The same was not done and the present application is filed for condonation of delay on 29.09.2015 i.e. after 1819 days i.e. 04 years 11 months and 23 days of the impugned order. The delay is of 1789 days.

11. In the present case, roznama filed at Exh. 3/4 reflects that, since 06.08.2008 both parties were absent, issues were framed on 31.10.2009, case was listed for evidence on 05.11.2009, over the

next 13 dates almost a year, evidence affidavit was not filed, Plaintiff did not appear. Further, the medical papers are not proved in evidence. *Arguendo*, even if they are perused they refer to year 2005 to 2015. The hospitalization is brought out on February 2015 for a week. They are medical test papers. The fact of old age is not denied. However, in the cross-examination of PW-1 it is brought out that PW-1 constituted attorney i.e. son of the Plaintiff who has also filed the present application on behalf of the Plaintiff was well versed with the facts of the case and was residing with and assisting the Plaintiff. The power of attorney in his favour was also executed on 09.11.2010 regarding handling that litigation, which means that the Plaintiff and her attorney/son were well aware of the status of the litigation. The medical reports pertain to the Plaintiff. However, her son was assisting her. As such the period of 1819 days from the date of order is not sufficiently accounted for so as to condone the delay of more than 04 years (1789 days) in preferring the application for restoration of suit. In the present facts for the above reasons, it would not be appropriate to condone the delay.

12. In these circumstances,

ORDER

1. Application is rejected.
2. Costs in cause.
3. Application is accordingly disposed off.

Place: Palghar
Date: 03/07/2026

(Smt. P.S.G. Chalkar)
2nd Jt. Civil Judge Junior Division,
Palghar.

CERTIFICATE

I affirm that, the contents of this P.D.F. file Judgment/order are same, word to word, as per the original Judgment/order.

Name of Stenographer	---	Prathamesh D. Patane, Stenographer (Gr-3)
Court	---	2 nd Jt.CJJD & JMFC Palghar.
Date	---	03/07/2026
Order signed by the Presiding Officer on	---	03/07/2026
Order uploaded on	---	03/07/2026