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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RFA 1180/2025, CM APPL. 81830/2025, CM APPL. 81832/2025

Anil Kaula

S/O Late Sh. P. N. Kaula

R/O W-21, Green Park, New Delhi

(Defendant No.1 In Trial Court)

.....Appellant

Through: Mr. Ravi Sikri, Sr. Advocate with Mr. Gaurav Goyal, Mr. Abhishek Paruthi, Mr. Deepank Yadav, Mr. Nishant Goyal & Mr. Vaibhav Sharma, Advocates.

versus

1. **Rajeev Kaula**

S/O Late Sh. P. N. Kaula

R/O 2066, West Sexton Dr.

Springfield, Mo Usa 65810.

(Plaintiff In Trial Court)

2. **Neeraj Tankha**

R/O C-241, Indira Nagar,

Lucknow, Uttar Pradesh 226016.

(Defendant No.3 In Trial Court)

3. **Sangeeta Zutshi**

R/O 1-A, Shila Kunj Colony

(Near Mpeb Hostel) Rampur,

Jabalpur, Madhya Pradesh 482008.

(Defendant No.4 In Trial Court)

4. **Namita Bhan**

R/O B-4, Mahalakshi Enclave,

P.O. Ormanjhi, Ranchi,

Jharkhand 835219.



(Defendant No.5 In Trial Court)

5. Dr. Vinay Krishna Tankha

R/O C-241, Indira Nagar, Lucknow,
Uttar Pradesh, 226016.

(Defendant No.6 in Trial Court)

.....Respondent

Through: Mr. Sanjiv Sen, Sr. Adv. Dr. Chandrashekhar, Adv., Shubhi Sharma, Adv., Mr. Prahalad Balaji, Adv. Ms. Jharna Singh, Advocate for R-1.

Mr. Ankur Mahindro, Mr Mohit Dagar, Ms Creesha Shastri, Advocates for R-2 & 5.

Mr. Jagrup Singh Hazra, Advocate for R-3 and 4.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

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21.04.2026

CM APPL. 81832/2025 (under Section 5 of Limitation Act, 1963 read with Section 151 CPC on behalf of the Appellant / Defendant No.1 for Condonation of Delay of 321 days in filing the Appeal)

1. An Application has been filed on behalf of the Appellant / Defendant No.1 Anil Kaula for **Condonation of Delay of 321 days in filing the Appeal.**

2. It is stated in the Application that a Suit for Partition of property No.W-21, Green Park, New Delhi (hereinafter referred to as “Suit Property”) forming part of estate of Professor Prithvi Nath Kaula, was filed between the parties who are brothers and sisters.

3. Professor Prithvi Nath Kaula expired on 30.08.2009. He was



survived by Asha Kaula his wife, Rajeev Kaula and **Anil Kaula** (Appellant / Defendant) his two sons and Neerja Tankha, Sangeeta Zuthshi, and Namita Bhan, his three daughters. It was claimed in the Suit that the Suit Property always remained a residence, only for Anil Kaula / Appellant and his family. His parents came to visit and stay with him whenever they desired and also received due respect and the attention.

4. Since the father Professor Prithvi Nath Kaula died intestate, **Respondent No.1 / Plaintiff** on 13.01.2014 filed the ***Suit for Partition of the Estate including the Suit Property against the Appellant / Defendant No.1 and Respondents No. 2 to 5. A Preliminary Decree of Partition was passed on 19.09.2024.***

5. Thereafter, there were various proposals discussed for the amicable settlement of the differences. ***The Final Decree of Partition was passed on 23.12.2024.***

6. The Applicant asserts that he was confident that his Advocate who had been briefed and whose fee has been paid, would appear in the matter and defend the Appellant's interest. However, he later learnt that after the passing of Preliminary Decree, his Counsel did not appear in the matter.

7. Thereafter, Respondent No.1 / Plaintiff Rajeev Kaula filed an ***Execution Petition No.36/2025, for execution of the Final Decree.*** No Notice of the Execution was served upon the Appellant.

8. The Appellant appeared in the Execution Petition through his Counsel, on 18.03.2025. He submitted that as the litigation was between brothers, he was hopeful that some settlement could be arrived between them.

9. On the next day i.e., 01.04.2025, Counsel for the Judgment Debtor



stated that Judgement Debtor No.1 was willing to settle the matter. Astonishingly, Counsel for the Decree Holders submitted that he had strict instructions to not go for mediation. This statement suggests that it was made only to put pressure on the Appellant.

10. The Appellant is a heart patient, suffering from congestive cardiac failure Class IV, severe LV dysfunction, triple vessel disorder, *etc.* and various other ailments. His condition was serious and he had to remain in the Hospital for about 1.5 months, wherein his heart valves and 3 vessels, were replaced.

11. On 19.8.2025, the following Order was made:

“Counsel for DH submits that parties are talking about settling the dispute through mutual understanding and need some time to explore the possibility of mutually agreeable settlement. Counsel for JD No.1 as well as counsel for JD No.3 and 4 concedes to the same. List for further proceedings on 15.09.2025.”

12. The Counsel for the Appellant sent a proposed Sale Deed to the Appellant on his WhatsApp, which was received from the Plaintiff’s Counsel on 09.10.2025. *The matter was discussed and certain suggestions were made.*

13. On 26.10.2025, the Counsel for the Plaintiff sent a proposed revised Sale Deed to the Appellant by WhatsApp. On 24.11.2025 the Counsel for the Appellant sent the WhatsApp message to the Appellant stating that there was a meeting fixed at 04:30 P.M on 26.11.2025, at Indian Law Office and to check and revert.

14. The parties met on 26.11.2025 in the office of the counsel for the



Plaintiff and discussed the matter, to resolve it. Some suggestions were exchanged between the parties.

15. In the meantime, it came to the notice of the Appellant that the other parties are trying to sell the Suit Property, including his share, to the third party. The Appellant, therefore, sent a WhatsApp message to his Counsel with a request not to engage in any dealings in relation to the Suit Property on his behalf and made a request that the matter be kept in abeyance.

16. This message was followed by a response from his Counsel who stated that the matter is kept in abeyance, as discussed. He did not sign any document on behalf of the Appellant or receive any draft or cash, on his behalf. Thereafter, the matter was kept in abeyance for further discussions.

17. The Appellant had a feeling that his interest was not duly taken care of by his Counsel. As such, he engaged a new Counsel and informed the previous Counsel with a request to him not to appear on his behalf thereafter.

18. Previous Counsel of the Appellant at no time, advised him to file an Appeal against the Decree passed in the Suit. The Appellant has been continuously engaged in the settlement talks at the initiative of the Plaintiff. *He always believed that the family dispute can be resolved, though it has not resolved till date.* He has a good case on merits and is likely to succeed in the Appeal.

19. Hence, a prayer was made that the delay of 321 days in filing the Appeal against the Final Judgment and Decree dated 23.12.2024 and Preliminary Decree dated 19.09.2024 in CS DJ 8103/2016, be condoned.

20. The Appellant has placed reliance on Geo Miller vs. Chairman 2020 4 SCC 643; Hari Shankar Singhania vs. Gaur Hari Singhania (2006) 4 SCC



658; Inder Singh vs. State of M.P. (2025) INSC 382 and Sheo Raj vs. Union of India 2023 INSC 885.

21. The **Respondents No.2 and 5 in their Reply** to this Application under *Section 5 of the Limitation Act, 1963 (hereinafter referred to as “the Act”)*, has made the preliminary submissions that the Application is wholly misconceived, vexatious and abuse of process of law. The Appellant has approached the Court without any sufficient and *bona fide* cause, for condonation of inordinate delay in filing the Appeal.

22. It is submitted that the Plaintiff / Respondent No.1 and the other answering Respondents, had filed the Suit claiming that their father Late Shri Prithvi Nath Kaula had died intestate and all his legal heirs were entitled to equal share. Smt. Asha Kaula the mother died and in terms of her Will dated 19.03.2012 all the surviving legal heirs were entitled to equal share.

23. On the contrary the Appellant / Defendant No.1 had claimed himself to be the sole owner of the Suit Property on the basis of alleged Will dated 01.07.2004 of Late Prithvi Nath Kaula. The learned Trial Court after duly appreciating the evidence in a well-reasoned and detailed reasoned Judgment, held that the Appellant had failed to prove the Will of his father on account of numerous suspicious circumstances while the Will of Late Smt. Asha Kaula bequeathing her share to all the legal heirs, was held proved. The Suit Property was decreed to be partitioned between the parties on the basis of intestate succession and property thus, got apportioned, in terms of the Will dated 19.03.2012 of Smt. Asha Kaula. The Appellant was granted a share in the Suit Property in accordance with the mode of devolution determined by the learned Trial Court.



24. Although, the present Appeal is styled as an Appeal against the Final Decree, in substance and effect, the Appellant is assailing the Preliminary Decree dated 19.09.2024, and not the Final Decree dated 23.12.2024. Therefore, the Limitation period for filing the Appeal started after the passing of Preliminary Decree dated 19.09.2024 and the Appeal could have been filed within a limitation period of 90 days, which ended on 19.12.2024.

25. The present Appeal has been instituted on 20.12.2025 and it also challenges the Final Decree, which is merely to circumvent the statutory bar of limitation which ought to be counted from the date of passing of Preliminary Decree. *The Appellant has projected a delay of 321 days, whereas the actual delay is 365 days i.e., from 20.12.2024 to 20.12.2025.*

26. The purported settlement talks, even if taken at face value, were only for limited duration and do not account for prolonged and unexplained inaction on the part of the Appellant. The attempt to shift the responsibility on the Counsel, is wholly misconceived and does not dispense with the Appellant's obligation to act with due care and diligence in pursuing the Appeal within statutory time period.

27. The Appellant on the other hand, has sought to mislead this Court by asserting that the Counsel remained absent after the passing of Preliminary Decree which is patently incorrect. Such conduct reflects a lack of *bona fide* on the part of the Appellant.

28. The medical grounds pleaded by the Appellant pertains to only a brief period and pertains to the period subsequent to expiry of statutory period of limitation.

29. It is claimed that bare perusal of the Application would reveal that the explanation provided is vague and wholly insufficient, with a substantial



period of delay remaining entirely unexplained. It is a settled law that the Appellant preferring the Appeal beyond limitation, has to satisfy the Court that he act diligently and with reasons which prevented him from preferring the Appeal within the period of limitation. The Appellant has miserably failed to explain the period of delay.

30. The Respondents have further submitted that the explanations offered by the Appellant for delay, are vague and implausible and thus, do not constitute sufficient cause for condonation of delay. The explanations advanced by the Appellant of alleged settlement discussions, attribution of delay to his counsel, and the medical reasons, failed to disclose any sufficient or *bona fide* cause for delay in preferring the Appeal.

31. On **merits**, all the averments made in the Application are denied. It is claimed that the Appellant was well aware of the pendency of proceedings after filing of Preliminary Decree on 19.09.2024. The learned Trial Court had issued a Court Notice to the Appellant to appear in person on 09.10.2024 for the next Court hearing, but he failed to appear in the Court.

32. A *Local Commissioner* was appointed *vide* Order dated 26.10.2024 who conducted an inspection of the Suit Property and submitted her Report before the Court. The Order dated 18.11.2024 would show that Counsel for the Appellant had appeared at 02:47 PM before the learned Trial Court and filed the *vakalatnama*. The subsequent appearance of the Counsel and the filing of the *vakalatnama*, belies the contention of the Appellant that his Counsel had abandoned the proceedings, after passing of the Preliminary Decree. Nevertheless, the entire averments are wholly irrelevant and have no bearing on the issue of condonation of delay in filing the Appeal.

33. It is further submitted that the new Counsel who appeared before the



Executing Court on 09.12.2025, sought time on account of being newly engaged. This was only a dilatory tactic, intended to delay the Execution Proceedings. The conduct of the Appellant was brought to the notice of the Court on 01.08.2025 wherein it was submitted by the Respondent No.1 that except the Appellant, all the parties were agreeable to the sale consideration offered by the potential buyer.

34. The Executing Court *vide* Order dated 09.12.2025 gave last and final opportunity to the Appellant to give his willingness to enter into the settlement, failing which the Execution Proceedings were to be carried further in accordance with law. Instead of conveying his willingness, the Appellant has filed the present Appeal.

35. The aforesaid facts clearly demonstrates that the Appellant has consistently being delaying the Execution Proceedings, and had no sincere intention to settle the matter effectively and actually. He has just used the settlement talks to prolong the Execution Proceedings, since he is enjoying the Suit Property being in possession thereof. The settlement talks between the parties cannot be termed as a sufficient cause for not filing the Appeal within the prescribed time, for the sole reason that the intention of the Appellant during such period of settlement talks, was not actually to settle the matter, but to enjoy the fruits of the Suit Property. It is, therefore, submitted that there exists no sufficient cause for condoning the delay and the Application be dismissed.

36. The Respondent has placed reliance on New Delhi Television Ltd. vs. M.J. Akbar and Ors., MANU/DE/1937/2018, Civil Rev. Petition No.1045 and 1241/2018 decided on 20.11.2018 and State of Madhya Pradesh vs. Ramkumar Coudhary MANU/SC/1290/2024.



Submissions heard and record perused.

37. The law of Limitation was founded on public policy that there should be an end to litigation by forfeiting the right to remedy, rather than the right itself. If the right or the remedy has not been exercised or availed for a long time, it must come to an end or cease to exist, after a fixed period of time.

38. The Apex Court in the case of Basawaraj and Anr. vs. Special Land Acquisition Officer, (2013) 14 SCC 81, had observed that the expression ‘sufficient cause’ should be given and liberal interpretation to ensure that the substantial justice is done, but only so long as negligence, inaction or lack of *bona fides* cannot be imputed to the party concerned. Whether or not sufficient cause has been furnished, can be decided on the facts of the particular case and no straight jacket formula is possible. It was observed that the legal maxim ***dura lex sed lex*** which means ‘*the law is hard but is the law*’ stands attracted in a situation where the Court has no power to ignore the provision to relieve what it considers a distress resulting from its operation. The statutory provision may cause hardship or inconvenience to a particular party, but the Court has no choice but to enforce it by giving full effect to the same.

39. The Supreme Court, in the case of N. Balakrishnan v. M. Krishnamurthy, (1998) 7 SCC 123, which was referred to in the case of Lanka Venkateswarlu (D) by LRs vs. State of Andhra Pradesh (2011) 4 SCC 363 emphasized that the concepts such as “*liberal approach*”, “*justice-oriented approach*”, “*substantial justice*” cannot be employed to jettison the substantial law of limitation, especially, in cases where the Court concludes that there is no justification for the delay. All discretionary powers,



especially Judicial powers, have to be exercised in a systematic manner, informed by reasons, within reasonable bounds, known to the law. Whims or fancies; prejudices or predilections cannot and should not form the basis of exercising discretionary powers.

40. The principles for condonation of delay are well settled through various judgements that law of limitation may harshly affect a particular party, but it has to be applied with all its rigours, when the statute so prescribes. When condonation of delay is sought, the Applicant has to explain the adequate and enough reasons which prevented him to approach the Court within limitation. If the party is found to be negligent or lacking *bona fide* in the facts and circumstances of the case, or found to have not acted diligently or remained inactive for long leading to an inordinate delay, there cannot be a justified ground to condone the delay, merely by imposing any condition.

41. In the light of the aforesaid principles, the present Application for condonation of Delay may be considered, to ascertain if it discloses any *bona fide* reason for delay.

I. Disclosure of Sufficient Cause for Condonation of Delay:

42. It is a fact that a *Preliminary Decree of Partition* was passed on 19.09.2024, wherein it was held that all the legal heirs/ parties to the Suit, were entitled to equal 1/5th share. Thereafter, the Appellant did not appear and in fact the Court Notice was issued to him to appear in the Court. He had then put an appearance through his counsel and *Final Decree of Partition* was passed on 23.12.2024.

43. Pertinently, the Appellant was well aware of both the Preliminary Decree as well as the Final Decree and had participated throughout in the



court proceedings. It is his own assertion that the Execution Petition was filed and he had put an appearance therein, in March, 2025.

44. Thereafter, according to the Respondent No.1, unilateral talks were started by him for a settlement. It was explained by the Counsel for Respondent No.1 that in fact, the auction was directed to be held and the parties agreed to bring in their own prospective buyers. The prospective buyer was identified by Respondents No.2 and 5, but the Appellant had rejected the figure quoted by the prospective buyer. He has been dilly-dallying consistently on the sale price and has not been forthcoming to agree to any particular proposal.

45. The Appellant throughout either personally or through Counsel, had been negotiating for a settlement for a period of one year, before filing the present Appeal. His assertion that he was not been represented fairly by his previous counsel is clearly a frivolous ground, which is not borne out from the record. He was being sufficiently represented through the Counsel and was all throughout a party to the settlement talks, that took place between the parties.

46. *Further, his own participation in the settlement proceedings, clearly reflected that he had not grievance against the Preliminary Decree or the Final Decree, and he himself had been participating to get the Final Decree executed amicably, by selling the Suit Property to a prospective buyer. Despite the prospective buyers being brought by the Respondents, it is he who conveniently did not agree to the proposed sale amount, which is quite understandable from the fact that he himself is in possession of the Suit Property and exclusively enjoying the benefit, despite an adjudication that other legal heirs are entitled to an equal share in the Suit Property.*



47. It has been *rightly contended by the Respondents that the entire endeavour for one year of proposed negotiations for settlement, is nothing but an attempt to buy the time and delay the Execution Proceedings.* Once the Appellant himself was participating in the negotiation talks and making an endeavour for settlement, it is quite evident that he had no grievance against the Preliminary Decree or the Final Decree.

48. In this context it may also be noted that when the Executing Court *vide* Order dated 09.12.2025, gave one last and final opportunity to the Appellant to determine his willingness to enter into the settlement, failing which the Execution Proceedings would be carried further in accordance with law, the Appellant has chosen to file his Appeal along with the Condonation Application. The conduct of the Appellant who had throughout been participating in the Execution Proceedings, clearly reflect that **there exists no sufficient cause** for him to file an Appeal after 321/365 days.

II. Medical Grounds for Condonation of Delay:

49. The *second ground* which had been taken by the Appellant was that he was medically unfit and was suffering from multiple complications. Even if he was not medically fit, but throughout he was being represented by his Counsel on his instruction and there is nothing on record to show that there was any impediment in pursuing the litigation. Even if those months of illness are excluded, even then during the prior and subsequent to his period of illness, he had been actively involved in the Execution Proceedings.

III. Misdemeanour of the Counsel:

50. The *third ground* for explaining the delay was that he got an impression *that his counsel was not representing his interest fairly* and thus,



he engaged another counsel, who advised him to file the Appeal.

51. The details as given in the Application, amply disclose that his counsel was throughout in contact with him, conveying him all the details of proceedings as well as the proposals and Appellant was all throughout being informed about all the proposals, in which he was actively participated.

52. *In regard to the alleged negligence or inaction of the Counsel*, it may be stated that there is a growing tendency on the part of the litigant to throw the entire blame on the head of the Advocate who was appearing for the Petitioners in the Trial Court, which in itself cannot be a ground to condone long and inordinate delay, as was held in the case of Rajneesh Kumar and Anr. vs. Ved Prakash, 2024 SCC OnLine SC 3380. It was further observed that the litigant owes a duty to be vigilant of his own rights and equally vigilant about the Judicial proceedings pending in the Court initiated at his instance. The litigant, therefore, should not be permitted to throw the entire blame on the head of the Advocate and thereby disown him at any time and seek the relief.

53. The observation made in Rajneesh Kumar and Anr. (supra) were followed in Braj Mohan Goel and Anr. Vs. Union of India, 2025 SCC OnLine Del 1043.

54. In the case of Salil Dutta vs. T.M. and M.C. Private Ltd., (1993) 2 SCC 185, in the context of the negligence of the Advocate, it was held that Advocate is the agent of the parties. His acts and statements made within the limits of authority given to him, are the acts and statements of the principal i.e., the party who had engaged him. It is true that in certain situations, in the interest of Justice, the Court may set aside the *ex-parte* Decree notwithstanding the negligence or misdemeanour of the Advocate, where it



finds that the client was an innocent litigant, but there is no such absolute rule that the party can disown its Advocate, at any time and seek relief.

55. The Appellant herein, is not an ignorant illiterate litigant, but is well educated and understands not only the law, but also his rights and interest.

56. In Shivamma (Dead) by LRs vs. Karnataka House Board and Others, 2025 SCC OnLine SC 1969, it was observed that the expression “*sufficient cause*” in itself is not a loose panacea for the ill of pressing negligent and stale claims. The expression is to be construed with Justice oriented flexibility, so as not to punish innocent litigants for the circumstances beyond their control.

57. However, this is a classic case where despite diligently participating throughout the trial and pursuing the execution petition, now feeling cornered that he may not be successful in dragging the Execution further to protect his exclusive possession, in terms of the order of the Court, has now chosen to conveniently put the blame on the advocate, when in fact, the record shows due diligence on the part of the advocate.

IV. Delay in Filing the Condonation Application:

58. The Appellant has claimed that there was a delay of 321 days, while the Respondent stated that the delay was in fact, of 365 days.

59. It is well settled that it is not the duration of delay, but the sufficiency of the explanation of delay, which is more significant. In some cases, even one day delay may not be condonable, while in other case, even delay of years may be condoned, if the reasons are found sufficient.

60. This aspect of delay was explained in the case of Union of India and Anr. vs. Jahangir Byramji Jeejeebhoy (D) Through his LRs, 2024 SCC OnLine SC 489, the Supreme Court held that *the length of delay* is a relevant



factor which the Court must take into consideration, while considering whether the delay should be condoned or not. From the tenor of the approach of the Appellant it appears that they wanted to fix their own period of limitation for instituting the proceedings for which law has prescribed a period of limitation. Once it is held that a party has lost his right to have the matter considered on merits, because of his own inaction for long, it cannot be heard to plead that the substantial justice deserves to be preferred as against technical considerations. While considering the plea for condonation of delay, the Court must not start with the merits of the main matter. The Court owes a duty to first ascertain the *bona fides* of the explanation offered by the party seeking condonation. It is only if the sufficient cause assigned by the litigant and the opposition of the other side is equally balanced, that the Court may bring into aid the merits of the matter for the purpose of condoning the delay.

61. It is quite evident from the entire chronology of the events, as detailed above, that there is no explanation whatsoever, for the delay in filing the appeal. In fact, *mala fide* is writ large on the face of the Application, meriting outright rejection.

Conclusion:

62. In the light of the aforesaid it is evident that there is ***no sufficient cause for condonation of delay***. The explanations given clearly reflect that *there was a deliberate non-filing of the Appeal and it was only to gain time*; when the Appellant felt cornered by the Order of the Execution Court dated 19.09.2024 and 23.12.2024, the present Appeal has been filed to again delay the Execution proceedings.

63. There is **no merit** in the Application, which is hereby **dismissed**.



RFA 1180/2025:

64. In view of the observations made in the CM APPL. 81832/2025, the present **Regular First Appeal** also **consequently stands dismissed**. The pending Application(s) are **disposed** of, accordingly.

APRIL 21, 2026
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NEENA BANSAL KRISHNA, J