

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA****RSA No.259 of 2024****Date of Decision : 28.11.2025**

Kamlesh Kalia**..... Appellant*****Versus*****Babu Ram (since deceased) through Legal Heirs****..... Respondents**

Coram:**The Hon'ble Mr. Justice Bipin Chander Negi, Judge*****Whether approved for reporting?¹***

For the Appellant : Mr. Vishal Mohan, Senior Advocate with
Mr. Parveen Sharma, Advocate.

For the respondents : Mr. Anil Kumar and Mr. Shagun Sharma,
Advocates, vice Mr. Arun Kaushal, Advocate.

Bipin Chander Negi, Judge (oral)

The present Regular Second Appeal is filed, inter alia, challenging the order dated 31.10.2020 passed by the Learned District Judge, Hamirpur, H.P., in Civil Misc. Application No. 378 of 2019. By the impugned order, the said application filed by the appellant under Section 5 of the Limitation Act, seeking condonation of delay in filing the First Appeal against the judgment and decree dated 30.01.2012, was dismissed. The said judgment dated 30.01.2012 was passed by the Learned Civil Judge (Senior Division), Nadaun, District Hamirpur, H.P., in Counter-Claim No. 37/2005, titled Babu Ram vs. Sonfi Devi.



2. The brief facts leading to the filing of the present appeal are that the appellant (since deceased, and now represented by her Legal representative), being the original Plaintiff, had instituted a suit in the year 2004 under Sections 9 & 26 of the Civil Procedure Code and Order VII Rule 1 of the Civil Procedure Code, read with Sections 34, 36 & 39 of the Specific Relief Act, 1963. The suit sought a declaration of ownership and permanent prohibitory injunction in respect of land comprised in Khata No. 188 Min, Khatauni No. 194 Min, Khasra No. 23 (77 min old), measuring 0-01-56 Hectares, situated at Tika Bhawrian, Tehsil Nadaun, District Mauza Khola, Hamirpur, H.P.

3. The said suit of the appellant was dismissed in default on 28.10.2009. In the said suit, the respondent (original Defendant) had filed a Counter-Claim seeking possession of the suit property. The said Counter-Claim of the respondent was allowed ex-parte vide judgment and decree dated 30.01.2012, passed by the learned Civil Judge (Senior Division), Nadaun.

4. According to the appellant, she remained unaware of the ex-parte decree passed in the Counter-Claim in the year 2012. The respondent/Decree Holder thereafter initiated execution proceedings. It was only during the pendency of these execution proceedings, after the death of the original appellant Smt. Sonfi Devi in the year 2018, that her Legal Representative (the present appellant) came to know about the entire litigation and the ex-parte decree passed against her.

5. The appellant, upon gaining knowledge, filed Civil Misc. Application No. 378 of 2019 (arising from Registration No. 613 of 2019)



before the Learned District Judge (Appellate Court) under Section 5 of the Limitation Act, seeking condonation of delay in filing the First Appeal. In the said application, it was asserted that the counsel originally engaged for the civil suit had withdrawn the same without prior intimation to the appellant (mother of the present LRs)

6. There was a total delay of approximately 491 days in filing the appeal. According to the appellant the delay occurred, *inter alia*, because the appellant was ill and was not residing in Village Bhavran. Knowledge of the ex-parte proceedings was acquired only when the appellant was served in the execution proceedings as the legal representative of the original counter-defendant. It was thus prayed that sufficient cause for condonation of delay was made out and the application was allowed.

7. The respondent opposed the condonation application by filing a reply, raising preliminary objections regarding maintainability. On merits, it was asserted that the appellant was aware of the ex-parte decree dated 30.01.2012 as she had received summons and had appeared before the Executing Court. The execution matter was listed for filing objections on 09.04.2019 in the presence of her[counsel. There was no justification for the inordinate delay, and the appeal was barred from the date of acquiring knowledge of the decree.

8. Thereafter the Learned Appellate Court framed the following issues on 09.09.2019:-

- "1. Whether there are sufficient reasons for the condonation of delay? OPA.
2. Whether the application is not maintainable? OPR.
3. Relief."



9. In evidence, the appellant examined herself as AW1, and the respondent examined himself as RW1.

10. Upon consideration, the Learned District Judge, Hamirpur, vide impugned order dated 31.10.2020, dismissed the condonation application (CMA No. 378 of 2019), consequently refusing to condone the delay and thereby not admitting the First Appeal for hearing on merits.

11. To avert immediate dispossession during the pendency of the application for condonation of delay, the appellant had earlier approached this Hon'ble Court by filing CMPMO No. 363 of 2019, wherein limited protection was granted.

12. Feeling aggrieved by the order dated 31.10.2020, the appellant, under a *bona fide* but mistaken belief regarding the appropriate remedy, filed a Civil Revision Petition bearing No. 1 of 2021 before this Hon'ble Court on 21.12.2020.

13. The said Civil Revision Petition was disposed of vide order dated 09.04.2024, permitting the appellant to withdraw the same with liberty to avail of such legal remedies as may be available in law. In compliance with the liberty granted by this Hon'ble Court, and after realizing that a Regular Second Appeal is the appropriate remedy to challenge the order refusing to condone delay (which had the effect of finally dismissing the First Appeal), the appellant has now instituted the present Regular Second Appeal.

14. Heard counsel for the parties and perused the impugned order.

15. The appellant, in the proceedings below, stated on oath that she was a homemaker who remained ill and was confined to bed. She



asserted that she came to know about the ex-parte decree and the order for vacating the residence only in July 2019 via a telephonic call from her counsel. She admitted to having engaged Sh. Sandeepan Sharma, Advocate, for filing objections in the execution proceedings but claimed she was unaware that those objections had been dismissed. She further denied any knowledge of receiving summons in the year 2012. Her defence rested on her illness, supported by a medical certificate from Dr. A.K. Sharma stating that she was under treatment for acute Hepatitis from 04.04.2018 to 04.08.2019, and her residence in Shimla, away from the village.

16. The respondent, RW1 in the proceedings below, countered that the appellant was present at the time of the decision in the execution proceedings, had filed objections through her counsel, and was therefore fully aware of the ex-parte decree. He admitted that the original counter-defendant, Smt. Sonfi Devi (the appellant's mother), was represented by another person and that the appellant resides in Shimla.

17. The record reveals, and it is not disputed by the appellant, that she had appeared in the execution petition and had filed objections. The counter-claim was decided ex-parte on 30.01.2012. The appellant, having stepped into the shoes of her deceased mother, Smt. Sonfi Devi, is bound by her acts and omissions. No assertion was made, either in pleadings or on oath, that Smt. Sonfi Devi had a reasonable cause for not contesting the counter-claim when it was alive.

18. The appellant's plea of continuous illness is not fully corroborated. The medical certificate was merely tendered and not proved in accordance with law. The laboratory report dated 17.01.2019, indicated she



was not under active treatment or investigation during the critical period between obtaining the certified copy and filing the appeal. No prescription slips or medical reports covering this intervening period were produced.

19. The Learned First Appellate Court found the respondent's plea to be probable that the appellant, after participating in execution proceedings, chose to await the outcome of her objections before filing the appeal. This conduct indicates a lack of due diligence and does not constitute a "sufficient cause" for condonation under Section 5 of the Limitation Act, 1963.

20. What we have here is a pure civil matter. An appeal has to be filed within the stipulated period, prescribed under the law. Belated appeals can only be condoned, when sufficient reason is shown before the court for the delay. The Appellant who seeks condonation of delay therefore must explain the delay. It is true that the courts should not be pedantic in their approach while condoning the delay, and explanation of each day's delay should not be taken literally, but the fact remains that there must be a reasonable explanation for the delay. In the present case, this delay has not been explained to the satisfaction of the court. The only reason assigned by the Appellant for the delay in filing the First Appeal was that she was continuously ill which is also not fully corroborated.

21. At this stage, it would be appropriate to refer to the authoritative pronouncement of the Apex Court in **SLP (C) No.17575 of 2023 title Thirunagalingam vs. Lingeswaran & Anr.** decided on 13.05.2025, relevant extract whereof is being reproduced here-in-below:-

"Further, this Court has repeatedly emphasized in several cases that delay should not be condoned merely as an act of generosity.



The pursuit of substantial justice must not come at the cost of causing prejudice to the opposing party. In the present case, the respondents/defendants have failed to demonstrate reasonable grounds of delay in pursuing the matter, and this crucial requirement for condoning the delay remains unmet."

22. Other than the aforesaid in the case of **Basawaraj and Anr. v. Special Land Acquisition Officer (2013) 14 SCC 81** while rejecting an application for condonation of delay for lack of sufficient cause has concluded in as follows:-

*12. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. "A result flowing from a statutory provision is never an evil. A court has no power to ignore that 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 giving full effect to the same. The legal maxim *dura lex sed lex* which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute.*

13. The statute of limitation is founded on public policy, its aim being to secure peace in the community, to suppress fraud and perjury, to quicken diligence and to prevent oppression. It seeks to bury all acts of the past which have not been agitated unexplainably and have from lapse of time become stale. According to Halsbury's Laws of England, Vol. 28, p. 266: "605. Policy of the Limitation Acts.—The courts have expressed at least three differing reasons supporting the existence of statutes of limitations namely, (1) that long dormant claims have more of cruelty than justice in them, (2) that a defendant might have lost the evidence to disprove a stale claim, and (3) that



persons with good causes of actions should pursue them with reasonable diligence.” An unlimited limitation would lead to a sense of insecurity and uncertainty, and therefore, limitation prevents disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence or laches. (See Popat and Kotecha Property v. SBI Staff Assn., Rajender Singh v. Santa Singh and Pundlik Jalam Patil v. Jalgaon Medium Project.)

14. In *P. Ramachandra Rao v. State of Karnataka* this Court held that judicially engrafting principles of limitation amounts to legislating and would fly in the face of law laid down by the Constitution Bench in Abdul Rehman Antulay v. R.S. Nayak.

15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the “sufficient cause” which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature.”

23. Therefore, in my considered opinion the First Appellate Court did not commit any mistake in dismissing the delay condonation application of the present appellant. In the aforesaid facts and attending circumstances, there arises no question of law, much-less a substantial question of law for



consideration of the Court, therefore, the present appeal is dismissed, being devoid of merit. Pending miscellaneous applications, if any, also stand disposed of.

November 28, 2025 (KS)

(Bipin Chander Negi)
Judge