

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR
S.B. Civil First Appeal No. 975/2025

Fazzi Alias Fazri W/o Shri Rustam & Ors.

----Appellants

Versus

Uday Singh S/o Shri Shakti Singh & Ors.

----Respondents

For Appellant(s)	:	Mr. Rahul Tiwari
For Respondent(s)	:	Mr. Garvit Khandelwal

HON'BLE MR. JUSTICE SUDESH BANSAL

Order

14/10/2025

1. Heard learned counsel for both parties on the application filed under Section 5 of the Limitation Act, seeking condonation of delay in filing the present first appeal.
2. Against the judgment and decree dated 02.08.2019, the present first appeal has been filed on 30.04.2025, which is delayed by 2008 days. Original defendant-Sawai Singh has passed away on 09.10.2020, hence, appeal has been filed by his daughters.
3. In the impugned judgment and decree dated 02.08.2019, a decree for specific performance, based on an agreement to sale dated 05.12.2006, was passed in favour of the respondent-plaintiff. It has *inter alia* been held that under the said agreement, defendant Shri Sawai Singh (now deceased) agreed to sell 1/3 share of Khasra No. 220/0.39, measuring 365 sq. yards, situated at Village Itarana, Tehsil & District Alwar, whereupon five rooms, *baramda*, kitchen, garage, *chowk* and stairs with *chabutra* etc. are constructed, to plaintiff against a total sale consideration of

Rs.3,00,000/-. It has been held that out of the total sale consideration of Rs.3,00,000/-, Rs. 2,50,000/- was paid and Rs.50,000/- was to be paid at the time of execution of the sale deed and handing over of actual possession. The suit for specific performance was filed on 16.07.2009. It appears that the original defendant- Shri Sawai Singh, filed written statements, but later failed to adduce evidence and set ex-parte, subsequently, passed away on 09.10.2020. The suit was decreed *ex parte* against him, vide judgment dated 02.08.2019.

4. It has been further stated in the application under Section 5 of the Limitation Act that the appellants were not in knowledge of the present suit, as their father never disclosed the same to them. They came to know about the impugned judgment and decree in the month of April, 2025, when the Court Nazir visited the property to take possession of the house. Hence, a prayer has been made to condone the delay and to hear the first appeal on merits.

5. *Per contra*, learned counsel, appearing for the respondent-plaintiff has opposed the application, contending that in the execution proceedings, show cause notices were served upon appellant Nos. 3 and 4 on 28.06.2022, and upon appellant Nos. 1 and 2 on 11.01.2023, through *chasbandagi*. Thereafter, on deposition of the balance sale consideration of Rs.50,000/-, the sale deed has been executed through the court in favour of the plaintiff-decree holder on 06.11.2023, though the physical possession of the suit property is yet to be obtained. It has, therefore, been submitted that appellants too were in knowledge of the impugned judgment and there exists no sufficient reason to

condone the huge delay, hence, application be dismissed and the present first appeal also deserves to be dismissed on the ground of delay itself.

6. Having heard counsel for both parties and from the facts narrated on record, it appears that appellants are married daughters of deceased defendant and claim to be in possession of the residential house wherein their brothers are residing with family. Appellants have been stated to be poor labourer and belong to lower strata of society and are rustic villagers. It has been stated that appellants filed this first appeal when in the execution of impugned judgment and decree, respondent-plaintiff sought to take possession of residential house through Court Nazir in the month of April 2025 and thereafter enquiry from the Court was made through their husband and this first appeal has been filed on 30.04.2025.

7. In the first appeal, issues in respect of execution of agreement dated 05.12.2006 as also payment of part of sale consideration to appellants' father are contentious issues since the original defendant denied agreement as well as receipt of any sale consideration. The first appeal is a valuable right and it is established proposition of law that Courts should make an endeavour to hear and decide the first appeal on merits, instead of dismissing the same on the ground of delay, unless and until the delay is deliberate, malafide and cannot be compensated.

8. It is trite law that length of delay, in filing an application for condonation of delay, is of no matter, only acceptability of the explanation is the criterion as has been held by Hon'ble Supreme Court in case of **N. Balakrishnan v. M. Krishnamurthy [(1998)]**

7 SCC 123] and it was further observed that law of limitation is founded on public policy and is meant to protect right of parties if application for condonation of delay does not reek of malafides and is not meant to adopt dilatory tactics.

9. In case of **State of Karnataka v. Y. Moideen Kunhi [AIR 2009 SC 2577]** the Hon'ble Supreme Court held and observed that expression "sufficient cause" must receive liberal construction to advance substantial justice. The condonation of delay is a matter of discretion of the Court.

10. Taking into consideration the involvement of intricate question of fact and law in the First Appeal, relating to immovable property as also the status of appellants being labour class and rustic villagers and the fact that the delay does not *prima facie* seems to be suffering from and tainted with malafides and to adopt dilatory tactics, this Court deems it just and proper that in order to impart substantial justice to both the parties, delay deserves to be condoned on payment of cost of Rs. 10,000/- to respondent-plaintiff.

11. Accordingly, the application under Section 5 of the Limitation Act is allowed, subject to payment of costs of Rs.10,000/- by the appellants to the respondent-plaintiff through counsel.

Cost has been paid and received by the counsel for respondent-plaintiff today itself and receipt has been given on the court file.

12. With consent of learned counsel for both parties, the appeal has been heard for admission and on stay application.

13. The First Appeal is required to be heard on facts and law which is a statutory right of party. Considering the issues involved in the present First Appeal, same requires hearing. **Admit**

14. On behalf of respondent-plaintiff, counsel has already put in appearance and other respondents are heirs of deceased defendant, hence, on the prayer of counsel for appellants, service of notices upon remaining respondents, is dispensed with.

15. Hence, service stands complete.

16. Heard on the stay application.

17. Indisputably, respondent-plaintiff is pressing the execution of impugned decree for obtaining the actual and physical possession of the suit property, though registered sale deed dated 06.11.2023 through court, has been executed in his favour pursuant to the impugned decree. If during course of appeal, possession of the suit property is not stayed, same would create more hardship to the judgment debtors-appellants, hence, while staying the possession of the suit property with appellants, equity with respondent-plaintiff is also required to be maintained. Plaintiff has paid amount of Rs. 3 lacs as sale consideration and has incurred expenses of near about Rs. 2 lacs in getting execution of the sale deed. While passing the interim stay order, this Court, keeping the principle in mind that decree for specific performance is an equitable relief and at the time of final decision in the first appeal, Court may explore the alternative remedy to compensate the respondent-plaintiff, in alternate of affirming the decree for specific performance. Hence, following order is passed:-

(I) If appellants deposit a lump sum amount of Rs. 10 lac on or before 30.11.2025 before the executing Court, further

execution in respect of possession of the suit property, shall remain stayed. The amount so deposited shall be invested in FDR in a nationalized bank, auto-renewable. Respondent-plaintiff shall be at liberty to move application before this Court for receipt of such amount.

(II) If appellants fail to deposit the amount within the stipulated time period, respondent-plaintiff shall be entitled to execute the decree in question for obtaining possession of the suit property as well, which shall remain subject to final outcome of this first appeal.

(III) In case respondent-plaintiff obtains possession due to the appellants' failure to deposit the amount as stated hereinabove, respondent-plaintiff shall not carry out any material change, demolition or constriction in the suit property and shall submit an undertaking to use and occupy the suit property as also to hand over its possession to appellants, in case impugned decree is set aside in the first appeal.

(IV) Both parties shall not sell/ create any third party interest in the suit property during course of present first appeal.

(V) The interim arrangement made hereinabove, shall not affect rights of either of the parties, to be adjudicated in the appeal appeal.

18. Accordingly, the stay application is disposed of.

(SUDESH BANSAL),J