

  
**HIGH COURT OF JUDICATURE FOR RAJASTHAN**  
**BENCH AT JAIPUR**

S.B. Civil First Appeal No. 1021/2024

Bishan Lal S/o Govinda (Deceased) & Ors.

----Appellants

Versus

Gulab Chand S/o Ram Sahai & Anr.

----Respondents

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|-------------------|---|---------------------|
| For Appellant(s)  | : | Mr. Atul Kumar Jain |
| For Respondent(s) | : | Mr. Ramakant Sharma |

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**HON'BLE MR. JUSTICE MANEESH SHARMA**

**Order**

**10/03/2026**

**In CMCC No.2065/2024 :**

1. Matter comes up on an application (CMCC No.2065/2024) filed by the applicants/appellants, under Section 5 of the Limitation Act, 1963, seeking condonation of delay of 135 days, in filing the present civil first appeal.
2. Learned counsel for the appellants submits that originally, the main suit was filed against the father (*Bishan Lal*) of appellants Nos. 1/1 and 1/2, and the husband (*Bishan Lal*) of appellant No. 1/3, but during the pendency of the main suit, *Bishan Lal* expired. He further submits that without effecting proper service, *ex-parte* proceedings were drawn against the appellants vide order dated 30.10.2023, and the suit was decreed on 05.02.2024, therefore, the appellants had no knowledge of the suit or the decree.
3. He further submits that upon gaining knowledge of the proceedings and the judgment and decree dated 05.02.2024, the

appellants immediately applied for a certified copy of the same and filed the present civil first appeal. He also submits that, since the matter relates to immovable property, proper service was not effected in the suit, and *ex-parte* decree was passed. Thus, the delay of 135 days in filing the present civil first appeal, is unintentional and *bona fide*; he therefore prays that said delay of 135 days, in filing the present civil first appeal, may kindly be condoned.

4. *Per contra*, learned counsel for the respondent has opposed the said application for condonation of delay, while submitting that the appellants were fully aware of the proceedings before the learned Court below, and the learned Trial Court rightly proceeded *ex-parte* against them vide order dated 30.10.2023. He lastly submits that no sufficient cause for condonation of delay has been made out; and prays for dismissal of the application.

5. Heard and considered the submissions made by learned counsel for the parties, perused the averments in the application (CMCC No.2065/2024), and the material available on record.

6. From a perusal of the averments in the application and the record, it is evident that the suit was originally filed against defendant No. 1. On account of the death of defendant No.1, the present appellants were substituted in the suit. However, service upon the appellants was not properly effected, and *ex-parte* proceedings were drawn against them and subsequently, the suit for specific performance was *ex-parte* decreed on 05.02.2024.

7. Thus, from the above, it appears that the appellants were prevented by sufficient cause from filing the present appeal within

the period of limitation prescribed under the Limitation Act, 1963.

8. Accordingly, the application (CMCC No.2065/2024) is allowed, and delay of 135 days, in filing the present appeal, is hereby condoned.

**In SBCFA No. 1021/2024 :**

1. Learned counsel for the appellants submits that the learned Court below seriously erred in passing the decree for specific performance, without appreciating the fact that there is serious dispute about the execution of the agreement and the suit property is an ancestral property, and with regard to the same, a partition suit bearing Case No.62/2018 is already pending before the learned ACJM, Fast Track Court, Niwai, District Tonk, wherein an interim stay has been granted. Yet, the learned Court below decreed the suit without affording the due opportunity to contest the same. Therefore, the impugned judgment and decree dated 05.02.2024, is unsustainable in the eyes of law.

2. Heard.

3. Mr. Ramakant Sharma, learned counsel represents respondent No.1, thus, notice need not be issued to respondent No.1.

4. In view of the submissions made hereinabove, issue notice to the respondent No.2 only.

5. Notices be filed in two sets and upon filing the same, one set be sent by ordinary post and another by registered post, returnable within four weeks.

6. Let the record of the learned Court below be summoned.

7. List the matter after four weeks.

8. In the meantime and until further orders, the execution of the impugned judgment and decree dated 05.02.2024 passed by the learned Upper District & Sessions Judge, Niwai, District Tonk, in Civil Suit No. 20/2021 (CIS No.32/2019), titled as '*Gulab Chand Vs. Bishan Lal & Ors.*', shall remain stayed.

(MANEESH SHARMA),J