SWAROOP SHARAD PHADKE
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2026:BHC-AS:26857

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.115 OF 2026
WITH
INTERIM APPLICATION NO.1642 OF 2026

Geetai Developers Private Limited
A Private Limited Company, having Office
at 006/F/4/A, shankardham, Sundervan
Complex, Andheri (W), Mumbai – 400 053
Email – geetaidevelopersprvtltd@gmail.com ... Appellant

versus

Shekhar Baban Thorat,
Adult, Indian Inhabitant, Residing at
A/21, Building No.5, Shree Darpan
Co-operative Housing Society Ltd.,
Shimpoli Road, Kastur Park, Nr. Sadguru
Shree Wamanrao Pai Manoranjan Udyan,
Borivali (West), Mumbai – 400 092.
Email – shekhar.thorat@gmail.com … Respondent

Mr. Makarand V. Raut, for Appellant.
Ms. Rishika Mehra with Mr. Sachin Mhatre, Ms. Smriti i/by Mhatre Law Associates, for Respondent.

CORAM: N.J.JAMADAR, J.

RESERVED ON : 17 JUNE 2026
PRONOUNCED ON : 1 JULY 2026

JUDGMENT :

1. This appeal is directed against an order dated 19 December 2025 passed by the Maharashtra Real Estate Appellate Tribunal (the Appellate Tribunal) in Misc. Application No.675 of 2024, whereby the application preferred by the Appellant – Promoter for condonation of delay of 851 days in

preferring the appeal against the non-compliance order dated 29 April 2022 and the subsequent order dated 30 May 2023 for issue of recovery warrant, came to be rejected.

2. The Appellant – Promoter was developing a project under the Slum Rehabilitation Scheme in respect of Walmiki Nagar SRA CHS Ltd. at CTS No.121 (part), 121/1 and 122 (part) of Village Hariyali, Taluka Kurla, Mumbai. The Appellant executed an agreement for sale of Flat No.103 admeasuring 457 sq.ft. on the first floor in A wing of the sale component building for a consideration of Rs.55,37,500/-. Under the terms of the agreement, the Appellant was to deliver possession of the subject flat to the Respondent – allottee on or before 31 December 2015. In the wake of default on the part of the Appellant to deliver possession of the subject flat in accordance with the terms of the contract, the Respondent filed a complaint before the Maharashtra Real Estate Regulatory Authority (the Authority).

3. By an order dated 31 January 2019, the Authority directed the Appellant to pay interest to the complainant on the entire amount paid by the complainant to the Respondent at the rate as prescribed under Rule 18 of the Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects Registration of Real Estate Agents, Rate of Interest and Disclosures on Website) Rules, 2017 from 1 January 2019. It was further directed that the interest shall be payable /set-off at the time of handing over

possession.

4. The Appellant did not comply with the aforesaid order passed by the Authority. Thus, the Respondent preferred non-compliance application before the Authority. Recording that there was non-compliance with the order dated 31 January 2019 passed by the Authority, in as much as the Appellant had failed to deliver possession of the subject flat and also pay interest for the delayed delivery of possession, recovery warrant under Section 40(1) of the Real Estate (Regulation and Development) Act, 2016 read with Rule 3 of the Rules, 2017, was ordered to be issued. Consequently, recovery warrant was issued on 30 May 2023.

5. The Appellant professed to assail the non-compliance order as well as the order of issuance of recovery warrant before the Appellate Tribunal. As there was delay of 851 days in preferring the appeal against the non-compliance order dated 29 April 2022, the appellant filed an application for condonation of delay, asserting that the applicant was under the bonafide impression that all the allottees of the project including the Respondent, have amicably settled and agreed to the revised date of possession of the project. As the Appellant had communications with the office bearers of the societies and allottees, the Appellant focused on completion of the project. Thus, the Appellant inadvertently and through oversight, did not check the status of the complaint. It was further averred that as multiple proceedings in respect of

the very same project were pending before the Authority and the Appellate Tribunal, it became impossible for the Appellant to keep track of each of the proceedings due to lack of resources. The Appellant had not received the notice of the non-compliance application as in the month of March 22 itself, the Appellant had changed the email ID of the project and notified the said change to the Authorities. Thus, the delay in preferring the appeal was neither deliberate nor intentional.

6. The application was resisted by the Respondent.

7. By the impugned order, the Appellate Tribunal was persuaded to reject the application observing, inter alia, that the causes ascribed in the application for delay did not satisfy the test of sufficient cause. On the contrary, the assertions in the application revealed lack of due diligence and casual approach of the Appellant in pursuing the proceedings to which it was a party. Concluding that no cogent reasons were ascribed for the huge delay of 851 days, the Appellate Tribunal rejected the application.

8. Being aggrieved, the Appellant has preferred this Appeal under Section 58 of the RERA, 2016.

9. Mr. Raut, learned Counsel for the Appellant, submitted that the Appellate Tribunal took a very rigid view of the matter. The well recognized principles which govern the application for condonation of delay, were not followed by the Appellant Tribunal. It was submitted that the Appellant had

sufficiently demonstrated that the notice of the non-compliance application was not served upon the Appellant. In such circumstances, the refusal to condone the delay causes grave prejudice to the Appellant and renders it remediless. Thus, a substantial question of law as to whether the Appellate Tribunal has committed an error in not adhering to the principles which govern the application for condonation of delay, arises for consideration, urged Mr. Raut.

10. In opposition to this, Ms. Mehra, learned Counsel for the Respondent-allottee, supported the impugned order. It was submitted that, in fact, no cause, much less sufficient one, was ascribed by the Appellant for the condonation of delay. What the Appellant has offered are essentially the excuses and not explanation.

11. I have perused the material on record and the impugned order. I have also given careful consideration to the submissions canvassed across the bar. Undoubtedly, in the matter of condonation of delay, ordinarily, the Courts/Tribunals adopt liberal approach. Such liberal approach is informed by the recognition that the procedure which is handmaid of justice should not be allowed to score a march over the substantive justice. The Courts/Tribunals draw their legitimacy from deciding the matters on merits rather than on technicalities. Therefore, the Courts/Tribunals lean in favour of condonation of delay, unless a party seeking condonation of delay failed to

ascribe justifiable reasons or there appears negligence, want of bonafide and intentional or deliberate delay on the part of such party. At the same time, the delay cannot be condoned as an act of judicial generosity.

12. Undoubtedly, the term "sufficient cause" ought to receive liberal construction. Nor can it be laid down in a straightjacket as to what constitutes a "sufficient cause". The expression "sufficient cause" is elastic enough to enable the Court to apply law in a meaningful manner so that it subserves ends of justice. Yet, in the least, the person seeking condonation of delay is enjoined to demonstrate that he acted with reasonable diligence in prosecuting the proceeding.

13. The considerations which ought to weigh with the Court in determining the prayer for condonation of delay were expounded by the Supreme Court in the case of **Basawaraj and Anr. V/s. Special Land Acquisition Officer**[1] in the following terms :

> "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 bonafide 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

1 (2013) 14 scc 81

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".

14. The following principles were culled out in the case of **Esha Bhattacharjee V/s. Managing Committee of Raghunathpur Nafar Academy and Ors.**[2], bear upon the controversy at hand :

"21.1. (i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

.....

21.5 (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

.....

21.7 (vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

.....

21.9 (ix) The conduct, behaviour and attitude of a party

2 (2013) 12 SCC 649

> relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.
> 21.10 (x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation."

15. If the reasons sought to be ascribed in the application for condonation of delay are evaluated on the touchstone of the aforesaid principles, it becomes explicitly clear that the Appellant has made no serious effort to account for the huge delay of 851 days. Having participated in the proceedings before the Authority and suffered an order to pay interest on the amount of consideration paid by the allottees to the Appellant for the delayed delivery of possession, the submission on behalf of the Appellant that he was unaware of the proceedings in the non-compliance application, cannot be readily acceded to.

16. The Appellant had sought to account for the delay by ascribing myriad reasons, which ex-facie do not constitute sufficient cause. The assertions in the application that the Appellant was under a bonafide impression that, all the allottees including the Respondent had amicably settled and agreed to the revised date of possession and as the Appellant was engrossed in the

completion of the project, the Appellant did not check the status of the complaint, purportedly on account of inadvertence and oversight, betray the casual approach on the part of the Appellant. The further claim of the Appellant that as there were number of proceedings in respect of the same project before the Authority and the Appellate Tribunal, it was impossible for the Appellant to keep track of each litigation due to lack of resources, is required to be noted to be negated. The aforesaid reasons sought to be ascribed by the Appellant for the delay are, at best, 'excuses' rather than 'explanation'.

17. A profitable reference in this context can be made to the judgment of the Supreme Court in the case of **Sheo Raj Singh (deceased) through legal representatives and Ors. V/s. Union of India and Anr.**[3], wherein the Supreme Court reminded the Courts that the Courts must distinguish between an "explanation" and an "excuse". The observations in paragraphs 31 and 32 are material and, hence, extracted below :

> "31. Sometimes, due to want of sufficient cause being shown or an acceptable explanation being proffered, delay of the shortest range may not be condoned whereas, in certain other cases, delay of long periods can be condoned if the explanation is satisfactory and acceptable. Of course, the courts must distinguish between an 'explanation' and an 'excuse'. An 'explanation' is designed to give someone all of the facts and lay out the cause for something. It helps clarify

3 (2023) 10 SCC 531

> the circumstances of a particular event and allows the person to point out that something that has happened is not his fault, if it is really not his fault. Care must however be taken to distinguish an 'explanation' from an 'excuse'. Although people tend to see 'explanation' and 'excuse' as the same thing and struggle to find out the difference between the two, there is a distinction which, though fine, is real.
>
> 32. An 'excuse' is often offered by a person to deny responsibility and consequences when under attack. It is sort of a defensive action. Calling something as just an 'excuse' would imply that the explanation proffered is believed not to be true. Thus said, there is no formula that caters to all situations and, therefore, each case for condonation of delay based on existence or absence of sufficient cause has to be decided on its own facts. At this stage, we cannot but lament that it is only excuses, and not explanations, that are more often accepted for condonation of long delays to safeguard public interest from those hidden forces whose sole agenda is to ensure that a meritorious claim does not reach the higher courts for adjudication." (emphasis supplied)

18. A profitable reference in this context can be made to a recent judgment to the Supreme Court in the case of ***Thirunagalingam v. Lingeswaran***[4]***.*** The Supreme Court has cautioned against condonation of huge delay as an act of generosity. The observation in paragraphs 31 and 32 read as under :

4 2025 INSC 672.

> "31. It is a well-settled law that while considering the plea for condonation of delay, the first and foremost duty of the court is to first ascertain the *bona fide*s of the explanation offered by the party seeking condonation rather than starting with the merits of the main matter. Only when sufficient cause or reasons given for the delay by the litigant and the opposition of the other side is equally balanced or stand on equal footing, the court may consider the merits of the main matter for the purpose of condoning the delay.
>
> 32. Further, this Court has repeatedly emphasised 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." (emphasis supplied)

19. In the case of ***H. Guruswamy and others vs. A. Krishnaiah since deceased by LR(s)***[5]***,*** the Supreme Court again emphasised that the concepts of, "liberal approach", and "substantial justice" should not be employed to frustrate the law of limitation. It was enunciated that the length of the delay is definitely a relevant matter which the Court must take into consideration while deciding whether the delay should be condoned or not. The observations of the Supreme Court in paragraphs 13 to 17 are instructive and, hence, extracted below :

5 2025 SCC Online SC 54.

"13. We are at our wits end to understand why the High Court overlooked all the aforesaid aspects. What was the good reason for the High Court to ignore all this? Time and again, the Supreme Court has reminded the District judiciary as well the High courts that the concepts such as "liberal approach", "Justice oriented approach", "substantial justice" should not be employed to frustrate or jettison the substantial law of limitation.

14. We are constrained to observe that the High Court has exhibited complete absence of judicial conscience and restraints, which a judge is expected to maintain while adjudicating a lis between the parties.

15. The rules of limitation are not meant to destroy the rights of parties. They are meant to see that the parties do not resort to dilatory tactics but seek their remedy promptly.

16. The length of the delay is definitely a relevant matter 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 respondents herein, it appears that they want to fix their own period of limitation for the purpose of 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 a long, it cannot be presumed to be non-deliberate delay and in such circumstances of the case, he cannot be heard to plead that the substantial justice deserves to be preferred as against the 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.
>
> 17. We are of the view that the question of limitation is not merely a technical consideration. The rules of limitation are based on the principles of sound public policy and principles of equity. No court should keep the 'Sword of Damocles' hanging over the head of a litigant for an indefinite period of time."
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> (emphasis supplied)

20. The aforesaid judicial pronouncements appear to govern the facts of the case at hand with equal force as the Appellant has singularly failed to ascribe the sufficient cause for condonation of huge delay of 851 days. It is also imperative to note that the order passed by the Authority in the year 2019 was never assailed by the Appellant. What was sought to be challenged was the non-compliance order and the recovery warrant. Thus, even if the merits of the case are considered, on balance, the exercise of discretion by the Appellate Tribunal not to condone the delay appears impeccable. Hence, the Appeal does not deserve to be entertained.

21. Thus, the following order :

ORDER

(i) The Appeal stands dismissed.

(ii) In view of the dismissal of the Appeal, IA No.1642 of 2026 also stands disposed.

(N.J.JAMADAR, J.)