

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.643 OF 2022
WITH
INTERIM APPLICATION NO.9952 OF 2022
IN
APPEAL FROM ORDER NO.643 OF 2022

National Insurance Company Limited
Having its office at National Insurance Building,
J. Tata Road, Churchgate,
Mumbai – 400 020

...Appellant/(Orig
Defendant No.1)

Versus

1. Amarchand Mansion Co-operative Housing Society Ltd. A co-operative Society registered under the Maharashtra Co-operative Societies Act, 1960 having its registered office at 8/11, Wellington Garden Estate, Madama Cama Road, Mumbai-400 039

...Respondent
No.1/Ori. Plaintiff

2. M/s. Amar Development Corporation A firm carrying on business at "D" Block, Wankhede Stadium, 'D' Road, Churchgate, Mumbai-400 020.

3. Nandkishore Lalbhai Mehta of Mumbai Indian Inhabitant, Age 50, one of the Partners of the Defendant/ Respondent No.2 abovenamed, residing at Jupiter Apartments Cuffe Parade, Colaba, Mumbai-400 005.

4. Mrs. Roshan Eruch Fanibunda, Age 51

5. Shashaina E. Fanibunda, Age 60

6. Ushaina E. Fanibunda, Age 51

All of Mumbai, Indian Inhabitants,
carrying business at Flat C-2,
Amarchand Mansion, 1st Floor,
Madama Cama Road, Mumbai-400 039

...Respondents
Nos. 2 to 6/
(Orig Defendant
Nos. 2 to 6)

Mr. V. Y. Sanglikar for the Appellant/Ori. Defendant No.1

Mr. Aditya Mehta a/w Ms. Chaitra Rao for the Respondent No.1/Ori. Plaintiff

CORAM : SHARMILA U. DESHMUKH, J.

DATE : AUGUST 3, 2026

ORDER :

1. The Appeal is at the instance of the original Defendant No. 1, being aggrieved by the order dated 2nd February 2022 passed by the Bombay City Civil Court at Bombay in Notice of Motion No. 4403 of 2015 in S. C. Suit No. 5680 of 1999, dismissing the Notice of Motion seeking condonation of delay in filing the application for setting aside the ex parte decree dated 5th March, 2004. For sake of clarity, the parties are referred to by their status before the Trial Court.

2. The Plaintiff Society had instituted S. C. Suit No. 5680 of 1999 against Defendant No. 1 and Defendant Nos. 2 to 6, seeking compliance with the statutory obligations prescribed under the provisions of the Maharashtra Ownership Flats Act, 1963, and to convey and assign in favour of the Plaintiff, the right, title and interest of Defendant Nos. 1 to 3 in the land being Plot Nos. 9/10 and 10/11, situated at Wellington Garden Estate, admeasuring 3,191 square meters, together with the structure standing thereon known as Amarchand Mansion.

3. There was no appearance by Defendant No. 1, and vide judgment and decree dated 5th March 2004, the Trial Court decreed the suit. On 24th July 2014, the Plaintiff initiated execution proceedings seeking to execute the decree and on 13th October 2015, Notice of Motion No. 4403 of 2015 came to be filed seeking condonation of delay in filing the Notice of Motion and for setting aside the *ex parte* decree dated 5th March 2004, and that the suit be restored to file. The application was opposed by Plaintiff, claiming that the delay of more than 3,650 days had not been sufficiently explained. It was pleaded that the interim applications in the suit, the plaint and the writ of summons were duly served upon Defendant No 1. The roznama of the Trial Court shows appearance of an Advocate on behalf of Defendant No 1. To the reply affidavits, the Plaintiff annexed all documents to show the receipt of the same by the Defendant No 1.

4. The rejoinder of Defendant No 1 dated 28th June, 2016 reiterated the stand taken in the affidavit in support of notice of motion and pleaded that the Advocate reflected in the roznama was not engaged by the Defendant No 1 and the appearances are not reflected correctly in the roznama.

5. On 9th November, 2016, an additional Affidavit was filed by Dayanand Narayan Pawar, Deputy Manager of Defendant No 1 Company contending that the statements made in the earlier affidavits

were factually incorrect. It was admitted that the writ of summons was duly served and accepted by the deponent of the Affidavit. It was contended that the deponent felt that Defendant No 1 had no role to play in the litigation and it was a bona fide mistake not to engage an advocate.

6. By the impugned order dated 2nd February 2022, the Trial Court observed that the Roznama of the suit showed the appearance of an advocate on behalf of Defendant No. 1 on some dates of hearing, and the service of the interim applications upon Defendant No. 1, as well as service of copy of the writ of summons. It held that no proper explanation had been given by Defendant No. 1 for condonation of huge delay. It noted that the suit was filed in the year 1999 and was decreed in the year 2004, whereas the Notice of Motion was preferred in the year 2015 without sufficient explanation for the delay, and dismissed the Notice of Motion.

7. Mr. Sanglikar, learned counsel appearing for the Defendant No.1, would submit that the affidavit in support of the Notice of Motion set up a case about the wrong address of Defendant No. 1 and the non-service of the writ of summons, plaint, communications etc. He submits that thereafter upon going through the records, it was found that service was effected and additional affidavit came to be filed. He would submit that the Plaintiff society stands on leasehold land which

was vested in Defendant No. 1 vide Assignment Deed dated 6th May 1967, and there is no renewal of lease. He submits that resultantly, the Plaintiff's prayer for lease does not even survive.

8. He would further submit that it was specifically pleaded in the additional affidavit that they had not engaged any lawyer to represent Defendant No. 1 in the Trial Court proceedings, and it has been admitted that the suit summons was served upon Defendant No. 1 on 22nd December 2003, but was not accompanied by a copy of the plaint. He submits that, in Writ Petition concerning the same property, the Defendant No 1 was informed by its advocate that Defendant No. 1 had no role to play, and therefore, under a bona fide misapprehension that Defendant No. 1 had no role to play in the Trial Court, no appearance was caused despite receipt of the summons.

9. He would further submit that it is accepted that Defendant No. 1 made a mistake in not engaging an advocate despite service of the writ of summons and Notice of Motion, upon a misunderstanding that the suit was a dispute between Defendant No. 2, the builder, and the Plaintiff, and that Defendant No. 1 was only a formal party. He would further submit that thereafter, for a period of 10 years, no steps were taken by the Plaintiff, and it was only when an application for execution was taken out in the year 2015 that the Defendant No 1 became aware that a decree had been passed against it, which could not be

performed as the lease had already expired in the year 2013. He would further point out that the Trial Court has held that the delay had not been properly explained without considering that it is admitted by Defendant No. 1 that there was a *bona fide* mistake. He submits that it is well settled that a liberal approach is required to be adopted while condoning the delay under Section 5 of the Limitation Act. In support, he relies upon the following decisions:

- i. N. Balakrishnan v. M. Krishnamurthy¹**
- ii. Mool Chandra v. Union of India²**
- iii. State of Nagaland v. Lipok AO & Ors.³**
- iv. Bhivchandra Shankar More v. Balu Gangaram More⁴**
- v. New Okhla Industrial Development Authority v. Rameshwar @ Ramesh Chandra Sharma (Dead) Through Legal Heir & Anr.⁵**
- vi. Perumon Bhagvathy Devaswom Perinadu Village v. Bhargavi Amma (Dead) by L.Rs. & Ors.⁶**
- vii. Aviation Travels Pvt. Ltd. v. Bhavesha Suresh Goradia⁷**

10. *Per contra*, Mr. Mehta, learned counsel appearing for Respondent No. 1, would submit that the Trial Court had not accepted the explanation tendered for the delay of almost 3,650 days, and the

1 AIR 1998 SC 3222

2 AIR 2024 SC 4046

3 AIR 2005 SC 2191 : 2005 AIR SCW 1748

4 AIR OnLine 2019 SC 2344 : AIR OnLine 2019 SC 1915

5 Civil Appeal Nos.8331-8345 of 2022 decided on 17/11/2022 (SC)

6 2008 AIR SCW 6025

7 AIR 2020 SC (Supp) 1523 : AIR OnLine 2020 SC 304

appearance noted on behalf of Defendant No. 1 is only one part of the order. He submits that the Trial Court has taken into consideration the service of the writ of summons and the other documents upon Defendant No. 1, and did not accept that there was a *bona fide* mistake. He submits that the conduct of Defendant No. 1 also disentitles it to any relief, as it initially denied receipt of the writ of summons and other applications and only when the reply affidavit pointed out the falsity of Defendant No. 1's case and produced material to show service, that the additional affidavit came to be filed on 9th November 2016, accepting the service of the writ of summons. He submits that not only was the writ of summons served upon the Defendant No 1, but even the Notice of Motion, the Chamber Summons were served, and also a communication dated 22nd January 2004 was addressed intimating the next date of hearing. He further submits that the contention that no copy of the plaint was served along with the writ of summons is irrelevant, as the writ of summons contains a concise statement of the prayers, and therefore Defendant No. 1 was aware of the specific prayers sought against it. He would point out that one of the grounds taken in the Appeal from Order is that the deponent of the additional affidavit, i.e. Dayanand Pawar, has admitted his *bona fide* mistake for concluding his opinion that Defendant No. 1 had no role to play and therefore did not appoint any advocate, shows that the

decision was consciously taken by Defendant No. 1 not to engage an advocate and contest the proceedings, and therefore it cannot be said to be a *bona fide* mistake.

11. He would further point out that in the event, the plaint was not served upon Defendant No. 1, the deponent of additional affidavit could not have taken a decision solely on the basis of the writ of summons, not to defend the proceedings. He submits that Defendant No. 1 has come with a false case that it became aware of the filing of the suit only after receipt of the execution application, whereas the additional affidavit admits receipt of the writ of summons and that, despite receiving the writ of summons, Defendant No. 1 did not seek a copy of the plaint. He would submit that even on merits, no case is made out to restore the suit, as since several decades the structure of the Society has been standing on the suit land, and all property taxes, repairs, etc. have been borne by the Society, and the execution of the conveyance is a statutory obligation to which there can be no defence. In support, he relies on the following decision :

**i. Oswal Fats & Oils Ltd. v. Additional Commissioner
(Administration), Bareilly Division, Bareilly & Ors.⁸**

12. Rival contentions now fall for determination.

⁸ (2010) 4 SCC 728

13. This Court in the present proceedings is concerned with the issue as to whether the Trial Court has exercised its discretion judicially in refusing to condone the delay of about 3,650 days. In **Sheo Raj Singh v. Union of India**⁹, the Hon'ble Apex Court, spelt out the powers of Appellate Court while judicially reviewing the discretion exercised by the trial court in adjudication of application for condonation of delay as under:

"30. Considering the aforementioned decisions, there cannot be any quarrel that this Court has stepped in to ensure that substantive rights of private parties and the State are not defeated at the threshold simply due to technical considerations of delay. However, these decisions notwithstanding, we reiterate that condonation of delay being a discretionary power available to courts, exercise of discretion must necessarily depend upon the sufficiency of the cause shown and the degree of acceptability of the explanation, the length of delay being immaterial.

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 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

9 (2023) 10 SCC 531

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.

33. Be that as it may, it is important to bear in mind that we are not hearing an application for condonation of delay but sitting in appeal over a discretionary order of the High Court granting the prayer for condonation of delay. In the case of the former, whether to condone or not would be the only question whereas in the latter, whether there has been proper exercise of discretion in favour of grant of the prayer for condonation would be the question. Law is fairly well-settled that "a court of appeal should not ordinarily interfere with the discretion exercised by the courts below". If any authority is required, we can profitably refer to the decision in *Manjunath Anandappa v. Tammanasa*-(2003) 10 SCC 390, which in turn relied on decision

in *Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha* (1980) 2 SCC 593 where it has been held that:

“an appellate power interferes not when the order appealed is not right but only when it is clearly wrong”. ” (emphasis in original)

14. Keeping in mind the contours of powers of Appellate Court, the material on record is required to be examined to ascertain whether the discretion has been rightly exercised by the Trial Court. In the first Affidavit filed by one M. B. Mishra, working as the Chief Manager of Defendant No. 1, there is clear denial to receipt of any papers and proceedings of the suit. The pleading in the Affidavit, based on the certified copy of the records made available to the Defendant No.1 on 14th August, 2015, is that the the Affidavit of service of Plaintiff shows service at Industrial Assurance building, whereas the Defendant No. 1's office is at a different location and that D.N. Pawar was an officer and not a clerk. Dealing with the affidavit of Plaintiff showing service of communication of 22nd January, 2004, it was averred that the UCP slip and acknowledgment card shows wrong address and does not bear the signature of known person. In paragraph 4, it was specifically pleaded that they have carefully checked the records and they do not have on their record (i) suit summons in the above suit and (ii) letter dated 22nd January, 2004 allegedly sent.

15. The affidavit was filed on 13th October 2015, and on oath, the Chief Manager deposed that upon careful checking of the records, the Defendant No. 1 did not find the suit summons in their records.

16. In response, the Plaintiff brought on record, the following documents:

(I) Affidavit of service showing service of Notice of Motion No 4279 of 1999 vide letter dated 11th October, 1999 with the stamp of Defendant No. 1 being clearly visible dated 18th October, 1999, copy of communication dated 16th September, 1999 intimating about the circulation of draft Notice of Motion on 21st September, 1999 in Trial Court, with the stamp of Defendant No 1 on the covering letter being visible dated 20th September, 1999.

(II) Affidavit of service dated 3rd May, 2002, in respect of service of Chamber Summons No. 84 of 2001. The covering letter dated 29th January, 2001 enclosing copy of Chamber Summons bears the stamp of Defendant No 1.

(III) A copy of the duly served writ of summons showing the signature and rubber stamp of the Defendant No. 1 and received by D.N. Pawar, AAO Legal on 22nd December, 2003.

(IV) Affidavit of service showing the dispatch and receipt of letter dated 22nd January, 2004 to Defendant No 1 intimating the next date

of hearing of 16th February, 2004. The acknowledgment card bears the stamp of the Defendant No 1.

17. In teeth of these documents, showing not only the service of writ of summons but also interim applications and intimation about the next date of hearing, the pleading on oath by the Chief Manager of Defendant No 1 that no documents were found in the records of Defendant No 1, is clearly a false statement on oath. The affidavit has been filed by the Chief Manager, who holds a responsible post in the Defendant No. 1 and without personally verifying whether the records are available, factually incorrect statements are made on oath in a most casual manner. An affidavit filed in the Court constitutes a solemn statement based on facts personal to the knowledge of the deponent and stating incorrect facts in affidavits undermine the importance of pleadings on oath, which cannot be countenanced.

18. Faced with such overwhelming documents, the Defendant No 1 has done a complete *volte face* and filed an additional affidavit of the said Dayanand Narayan Pawar, working as Deputy Manager of Defendant No. 1 Company, who claimed to be working in the Vadodara office, stating that some of the statements in the affidavit filed on behalf of the Defendant No. 1 were contradictory and factually incorrect. The said Dayanand Pawar, in his additional affidavit, has

specifically deposed that he has personally seen the records and has accepted that the suit summons was served in December 2003 at their office in Royal Insurance Building. It is not the Defendant No. 1's case that the office records had travelled along with the said Dayanand Pawar to Vadodara. The records were very much available in Mumbai and the first affidavit was filed upon checking the same records. The certified copy of the papers and proceedings were obtained by the Defendant No 1 and the endorsement on the copy of writ of summons of Dayanand Pawar was clearly visible. A diligent litigant would have immediately contacted Dayanand Pawar, who was still serving with Defendant No 1 to find out the correct facts before filing an Affidavit on oath. The manner in which the proceedings are handled demonstrates clear negligence and casual approach to Court litigation.

19. In the additional affidavit, there is an explicit admission that they made a mistake in not engaging an advocate in the suit despite service of the writ of summons and the Notice of Motion. It is also pleaded that it was felt that Defendant No. 1 had no role to play, which is a *bona fide* mistake. The admission is not of an inadvertent mistake but of a conscious decision by a legal officer not to contest the proceedings for which the Defendant No 1 has itself to blame. It also cannot be accepted that a copy of the plaint was not served upon them, as without a copy of the plaint, the legal officer could not have

taken a decision that Defendant No. 1 had no role to play. There is also no explanation as to why, if the copy of the plaint was not served along with the writ of summons, no communication was addressed to the advocate for the Plaintiff seeking a copy of the plaint.

20. Having taken a conscious decision not to participate in the proceedings, no ground has been made out to set aside the *ex parte* decree. Despite being aware of the pendency of the proceedings since December 2003 when the writ of summons was served, and interim applications being served, the Defendant No. 1 did not even bother to find out the fate of the proceedings. It is no answer to say that Defendant No. 1 was a formal party, as even if a party is impleaded as a formal party, it is the duty of the litigant to keep itself abreast of the proceedings. In the present case, the Defendant No. 1 is the National Insurance Corporation Limited, having a full-fledged Legal Estate and Establishment Department, which signifies that there is a specifically dedicated department for the purpose of managing the legal affairs and thus cannot be permitted to shrug off the consequence of its decision consciously taken.

21. Though being aware, the Defendant No. 1 permitted the *ex parte* decree to be passed and took no steps until they were served with the execution application in the year 2015. The inaction demonstrates negligence on the part of Defendant No. 1 and not a bona fide error.

The Trial Court has noted that the documents on record demonstrate service upon Defendant No. 1 and that the usual explanation was given. The Trial Court was not satisfied with the explanation that it was a *bona fide* mistake and exercised its discretion against the Defendant No. 1. The Trial Court has rightly noted the relevant material in order to arrive at a conclusion of negligence and omission on the part of Defendant No. 1 in defending the proceedings before the Trial Court. The suit of the year 1999 was decreed in the year 2004, and the execution has been pending since the year 2015.

22. For the purpose of condoning the delay, the expression "sufficient cause" cannot be interpreted in a casual manner, to accept the apology of an entity such as the National Insurance Corporation Limited, resulting in injustice to the Plaintiff Society which has been fighting the litigation since the year 1999. It is well settled that the length of delay is not a decisive factor, but the sufficiency of a satisfactory explanation and in the present case, it is the negligence and omission that militates against condoning the delay.

23. Though one of the reasons, why the Trial Court rejected the application was on the ground of appearance being shown in the roznama on behalf of the Defendant No. 1, irrespective of the said fact, even if it is taken that there was no appearance on behalf of Defendant No. 1, the fact remains that the writ of summons was served in the year

2003, and despite that, Defendant No. 1 chose not to participate in the proceedings. The Trial Court has exercised the discretion in a judicious manner warranting no interference.

24. Dealing with the citations relied upon by Mr. Sanglikar, it is well settled that whether the delay is required to be condoned or not will depend upon the facts of each case, and though it is reiterated in various judicial pronouncements that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction, the same should not result in injustice to a party who has succeeded in the suit and is awaiting the fruits of its decree. It is only a diligent litigant who needs to be protected by construing liberally the words "sufficient cause" appearing in Section 5 of the Limitation Act, but not a litigant who is guilty of negligence and omission.

25. In the case of ***N. Balakrishnan v. M. Krishnamurthy*** (supra), there was a delay of 883 days in filing the application under Order IX Rule 13. The facts in that case were that the Appellant therein had engaged an advocate for filing the Motion to set aside the *ex parte* decree, but the advocate failed to inform him that the Application was dismissed for default on 17th February 1993, and the litigant became aware only when he received summons for execution on 5th July 1995 and despite paying the professional charges, the advocate did not take any steps. It is in these facts that the Hon'ble Apex Court noted that if

the explanation does not smack of *mala fides* or is not put forth as part of a dilatory strategy, the Court must show utmost consideration in condoning the delay.

26. In the case of ***Mool Chandra v. Union of India (supra)***, there was a delay of 425 days in challenging the order dated 22nd November 2006. The order declining to condone the delay was in the context of challenging the punishment of stoppage of increment, and the explanation tendered was that there was no intimation of withdrawal of the earlier application by the then advocate, and that the order of withdrawal did not reflect that such withdrawal was based on any memo duly signed by the Appellant. It is in such facts that the Court noted that the test is whether, by reason of the delay, there is such negligence on the part of the Petitioner so as to infer that he has given up his claim, or whether the Petitioner had moved the Writ Court, and the rights of third parties had come into being, which should not be allowed to be disturbed unless there is a reasonable explanation for the delay. It also noted the decision in the case of ***Commissioner, Nagar Parishad, Bhilwara v. Labour Court, Bhilwara & Anr.***¹⁰, that if no negligence can be attributed to the Appellant, then necessarily the delay which has not been condoned by the Tribunal and affirmed by the High Court deserves to be accepted.

¹⁰ (2009) 3 SCC 525

27. In the case of **State of Nagaland v. Lipok AO & Ors.** (supra), the Hon'ble Apex Court has noted that Section 5 is to be construed liberally. However, at the same time, it has held that what constitutes sufficient cause cannot be laid down as a hard and fast rule. In the facts of that case, the Hon'ble Apex Court noted that decisions are taken by the officers at a slow pace, and that the encumbered process of pushing files from table to table and keeping them on the table for considerable time, causing delay, intentional or otherwise, is a routine. In that case, it was the State of Nagaland which had approached the Hon'ble Apex Court, and the explanation was one of bureaucratic delay, which is not the case in the present fact, as there is a clear admission that a decision was taken not to participate in the Trial Court proceedings.

28. In the case of **Bhivchandra Shankar More v. Balu Gangaram More** (supra), the Hon'ble Apex Court has held that a liberal construction should be given to the expression "sufficient cause" when there is no inaction, no negligence, nor want of *bona fides* on the part of the Appellant. The facts of the present case do not warrant condoning the delay in favour of the Appellant, as there is inaction and sheer negligence.

29. The decision in the case of **New Okhla Industrial Development Authority v. Rameshwar @ Ramesh Chandra Sharma (Dead) Through**

Legal Heir & Anr. (supra), was in the context of the Land Acquisition Act, where the High Court had enhanced the amount of compensation and the Acquiring Body was saddled with the liability to pay the statutory benefits and interest for 22 years. The Hon'ble Apex Court held that the landowners shall not be entitled to any statutory benefits, including the interest on the enhanced amount of compensation during the period of delay. The Hon'ble Apex Court has, therefore, balanced the equities in that case by granting the substantial relief of enhancement of compensation while curtailing the liability to pay interest for the period of delay.

30. In the case of ***Perumon Bhagvathy Devaswom Perinadu Village v. Bhargavi Amma (Dead) by L.Rs. & Ors.*** (supra), the Hon'ble Apex Court summarized the principles applicable while considering an application for condonation of delay, and one of the principles is that want of diligence or inaction can be attributed to an Appellant only when something is required to be done by him and is not done. The said decision, in fact, would militate against the case of the Defendant No. 1.

31. In the case of ***Aviation Travels Pvt. Ltd. v. Bhavesha Suresh Goradia*** (supra), in a suit for damages, an application was made for setting aside the *ex parte* judgment and decree, and on the facts of that case, it was noted that there was a dispute as to whether the

Appellant was served or had entered appearance in the suit, which is not the case here.

32. In the case of ***Oswal Fats & Oils Ltd. v. Additional Commissioner (Administration), Bareilly Division, Bareilly & Ors.*** (supra), relied upon by Mr. Mehta, the Hon'ble Apex Court has held in paragraph 20 as under:

"20. It is settled law that a person who approaches the court for grant of relief, equitable or otherwise, is under a solemn obligation to candidly disclose all the material/important facts which have bearing on the adjudication of the issues raised in the case. In other words, he owes a duty to the court to bring out all the facts and refrain from concealing/suppressing any material fact within his knowledge or which he could have known by exercising diligence expected of a person of ordinary prudence. If he is found guilty of concealment of material facts or making an attempt to pollute the pure stream of justice, the court not only has the right but a duty to deny relief to such person."

33. The change of stand by the Defendant No. 1, after being confronted with the documents evidencing service of the papers and proceedings, constitutes suppression of facts while filing the Notice of Motion, and therefore, even on that count, the Defendant No. 1 is disentitled to any relief, apart from the fact that there is no sufficient explanation for the delay. The mistake which is claimed by the Defendant No. 1 was a conscious decision not to contest the

proceedings and does not constitute a sufficient explanation for the delay of almost 3,650 days.

34. In light of the above, the Appeal from Order is dismissed.

35. Nothing survives for consideration in the Interim Application. The same stands disposed of.

[SHARMILA U. DESHMUKH, J.]

36. At this stage, request is made by Mr. Sanglikar, learned counsel appearing for Appellant, for extension of interim relief for further period of eight weeks from today.

37. Learned counsel appearing for Respondent opposes the request.

38. As the interim order is operating in favour of the Appellant since the year 2022, this Court is inclined to extend it for further period of eight weeks from today.

[SHARMILA U. DESHMUKH, J.]