



2025:DHC:6542-DB



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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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*Judgment reserved on: 23.07.2025*  
*Judgment delivered on: 07.08.2025*

+ **RFA (OS) 40/2025, CM APPL.42208/2025 (for condonation of delay of 3122 days in filing the appeal) and CM APPL.42209/2025 (for stay)**

KAVITA ARORA & ANR.

.....Appellants

Through: Mr. Jagdeep Singh Bakshi,  
Senior Advocate with Mr.  
A.S. Bakshi, Mr. N.S. Bakshi,  
Mr. N. Kumar, Ms. Anshu  
Dawar and Mr. Sparsh  
Kanwal, Advocates.

versus

DEEPAK ARORA & ORS.

.....Respondents

Through: Mrs. Kajal Chandra and Ms.  
Hatneimawi, Advocates for  
R-1 to R-3.  
Ms. Vandana Khurana,  
Advocate for R-6 to R-17.

**CORAM:**

**HON'BLE MR. JUSTICE ANIL KSHETARPAL**

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN**

**HANKAR**

### **J U D G E M E N T**

#### **HARISH VAIDYANATHAN SHANKAR, J.**

1. The present Appeal under Section 96 read with Order XLI of the **Code of Civil Procedure, 1908**<sup>1</sup>, read with Section 10 of Delhi High Court Act, 1966 challenges the **Judgment and Decree dated 20.12.2016 and Judgment dated 22.05.2025**<sup>2</sup> passed by the learned

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<sup>1</sup> CPC

<sup>2</sup> Impugned Judgements



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Single Judge of this Court in CS(OS) 189 of 2016 and in Review Petition No. 349/2024 in CS(OS) 189/2016, respectively. The present Appeal seeks the following reliefs:

*In view of the aforesaid facts and circumstances, it is most humbly prayed that this Hon'ble Court may be pleased to:*

*1) Allow the present Appeal and set aside/reverse the Impugned Judgment and Decree dated 20.12.2016 passed by the Ld. Single Judge in the matter titled as "Deepak Arora & Ors. Vs. Kavita Arora & Ors."; CS(OS) 189/2016; and all proceedings emanating therefrom;*

*2) Set aside/reverse the Judgment dated 22.05.2025 passed by the Ld. Single Judge in the matter titled as "Deepak Arora & Ors. Vs. Kavita Arora & Ors."; in Review Petition No. 349/2024 in CS(OS) 189/2016; and*

*3) Pass such further orders or directions as this Hon'ble Court may deem just and proper in the facts and circumstances of the present case.*

2. The present Appeal is also accompanied by an application bearing **CM Appl. No. 42208/2025**, seeking condonation of delay of 3122 days in filing the Appeal with respect to Judgment and Decree dated 20.12.2016.

3. At the outset, it needs to be noted that what the Appellants herein are, in essence, seeking to challenge, is the Judgment dated 22.05.2025 passed by the learned Single Judge in the **Review Petition 349 of 2024 in CS(OS) No. 189 of 2016** whereby the said Review Petition was adjudicated upon and dismissed on merits as well as on the ground of delay, i.e. this Court refused to condone the delay of 2828 days in filing of the said Review Petition.

4. The Appeal is premised on a singular circumstance; that of the Appellants being unaware of the **Will dated 26.06.1978 of Smt. Hans Kaur<sup>3</sup>**, by which Appellant No.1's husband, namely, late Mr. Raj

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<sup>3</sup> The Will



Kumar Arora, was bequeathed the suit property to the exclusion of all other persons.

5. It appears that, the learned Single Judge, while hearing the Review Petition, was faced with the exact same arguments. While comprehensively dismissing the contentions, as raised in the Review Petition, the learned Single Judge in Judgment dated 22.05.2025 held as follows:-

*“26. Broadly understood, case of Defendants No. 1 and 2 in the review petition, seeking review of judgment dated 20.12.2016, is predicated on a Will dated 26.06.1978, whereby Smt. Hans Kaur bequeathed the entire suit property in favour of Shri Raj Kumar Arora, who in turn executed a Will dated 27.09.2003, bequeathing the property in favour of Defendant No. 1. The argument is that once the property is bequeathed in favour of Defendant No. 1, no other legal heir is entitled to the property and thus the final decree by sale of suit property and distribution of sale proceeds amongst all legal heirs in respective shares as declared by preliminary decree is unsustainable in law.*

*27. The moot question that arises for consideration in this review petition is whether Defendants No. 1 and 2 can set up a Will at this stage to claim rights on the suit property to the exclusion of other legal heirs and whether there is any legal infirmity in the judgment and decree dated 20.12.2016. It is undisputed that when Defendants No. 1 and 2 filed written statement on 05.08.2016, they had taken a stand that the property was bequeathed by Smt. Hans Kaur in favour of Shri Raj Kumar Arora. However, no material particulars of the Will were pleaded. Order VI Rule 1 CPC provides that ‘pleading’ shall mean plaint or written statement. Order VI Rule 2 CPC provides that every pleading shall contain a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be. Expression ‘material facts’ is not defined anywhere, however, material facts would be those facts on which a party relies for his claim or defence and facts on which Plaintiff’s cause of action or Defendant’s defence depend and the facts which must be proved to establish Plaintiff’s right to the relief claimed in the plaint or Defendant’s defence in the written statement. ‘Material particulars’ are details of the case set up by the parties and are such pleas which are necessary to amplify,*



*refine or explain material facts. It is settled that if material facts are omitted, a party should not be allowed to raise a contention on a particular point even if some material is available in the evidence. On the other hand, the Court may permit the party to raise material particulars if material facts on those aspects have been pleaded, on the basis of the evidence unless the opposite party is thereby materially prejudiced. In the present case, the material fact of execution of a Will dated 26.06.1978 was completely missing in the written statement filed by Defendants No. 1 and 2. Admittedly, neither the original nor the photocopy of the Will was ever filed. Therefore, at this stage, Court cannot permit Defendants No. 1 and 2 to set up the Will dated 26.06.1978 to seek a review of the judgment dated 20.12.2016, when no steps were taken over the years to even amend the written statement.*

*28. It is pertinent that on 06.12.2016, during the pendency of the suit, Court took up an application filed by the Plaintiffs being I.A. No. 13230/2016 seeking a direction to Defendant No. 1 to discover on oath and place on record original documents on which she was claiming ownership of the property. On a query by the Court whether or not the failure of Defendant No. 1 to prove her defence would be to the benefit of the Plaintiffs and whether or not the Plaintiffs by filing such an application were helping Defendants in proving their case, the application was not pressed. However, the fall out of this order is that Defendants No. 1 and 2 were completely put to notice that there was nothing on record to prove their exclusive ownership to the suit property and even at this stage, no steps were taken to produce the alleged Will. Judgment dated 20.12.2016 indicates that there was no opposition from Defendants No. 1 and 2 in passing a decree of partition and the only objection was that there were other properties of which they were entitled to seek partition.*

*29. Since there was no opposition, in the presence of the counsels for the parties, Court held that on the pleadings as existing, no issue requiring a trial arose and in this light, a preliminary decree was passed declaring the shares of the parties. Since the counsels stated that considering the number of shares and the size of the property, it was not capable of partition by metes and bounds, a final decree was passed on the same day for partition by sale of the property and distribution of the sale proceeds amongst the parties as per their respective shares declared in the preliminary decree. Since Defendants No. 1 to 5 were in exclusive possession of the property, they were directed to vacate their respective portions and deliver possession to the purchaser. It is evident that till*



*the passing of the final decree, Defendants No. 1 and 2 did not propound the Will dated 26.06.1978 and/or seek its probate.*

*30. It is a settled law that Article 137 of the Limitation Act, 1963 applies to application for grant of probate or letters of administration. Article 137 provides a limitation period of three years for filing an application for which no period of limitation is provided elsewhere and the three years commence from when the right to apply accrues. It is true that probate of a Will is not mandatory if the same is not contested, however, the moment there is a contest to the Will, the party propounding the Will is required to seek a probate. In *Kunvarjeet Singh Khandpur v. Kirandeep Kaur and Others*, (2008) 8 SCC 463 and *Krishan Kumar Sharma v. Rajesh Kumar Sharma*, (2009) 11 SCC 537, the Supreme Court held that Article 137 shall apply to petitions for grant of probate and letters of administration. Division Bench of this Court in *Pratap Singh and Another v. State & Another*, 2010 SCC OnLine Del 2715, followed these judgments and this position has been reiterated by the Supreme Court in *Sameer Kapoor and Another v. State Through Sub-Division Magistrate South, New Delhi and Others*, (2020) 12 SCC 480. Therefore, it is clear that if the Will is contested and a party claims interest adverse to the bequeather, the party claiming rights under the Will will have to apply for probate of the Will and this can be done only within three years when the right to apply accrues.*

*31. The next question as to when the right to apply accrues need not detain this Court as this issue has been decided by the Supreme Court in *Pamela Manmohan Singh v. State & Ors.*, 1999 SCC OnLine Del 1077, wherein it was held that period of three years would commence from the date on which the legatee to a Will could be justifiably ascribed with the knowledge that the Will on which his claim is founded is likely to be disputed by other persons, especially the natural heirs of the testator. In *Pratap Singh (supra)*, Division Bench was seized of a case where Appellant had filed a probate petition on 05.09.1997. Respondent No. 2 had filed a civil suit for partition and rendition of accounts on 28.05.1997 inter alia alleging that the suit properties were joint family properties. Prior to the said suit, Respondent No. 2 had filed another civil suit in 1984 for declaration that the alleged Will dated 11.03.1983 was null and void, which was disposed of with certain directions on 19.03.1996. Applying the judgments of the Supreme Court aforementioned, the Division Bench held that the right to apply for probate accrue to the Appellant on the date of knowledge of the 1984 suit and probate petition being filed beyond three years period of limitation was barred by limitation.*



32. *Coming to the facts of this case, Plaintiffs filed the present suit on 08.04.2016 seeking partition, permanent injunction and rendition of accounts etc. with respect to the suit property. On 05.08.2016, written statement was filed by Defendants No. 1 and 2. Therefore, institution of the suit for partition was a clear indication to Defendants No. 1 and 2, alleged legatees of Will dated 26.06.1978 that the Will was likely to be disputed by the Plaintiffs, who were the natural heirs of Smt. Hans Kaur. However, not only was the Will not set up in defence by furnishing material facts and/or particulars, no steps were taken to file a probate petition within three years from the knowledge. Therefore, even if Defendants No. 1 and 2 were to file a probate petition today, the same will be time barred. Hence, what Defendants No. 1 and 2 cannot do directly, they cannot be permitted to do indirectly by filing a review petition.*

33. *This matter can be examined from another angle. It is settled law that if two or more rights are available to a party on the same subject, it would be open to a party to elect which one right it would like to avail of, called the Doctrine of Election. In *Parma Nand Ahuja v. Satya Dev Ahuja and Others*, AIR 1973 DEL 190, the Appellant had instituted a suit against his two step brothers, a step sister and step mother for partition of his share in the properties belonging to his father stating that his father had executed a Will dated 16.10.1956 but he had chosen to place his claim on 1/5th share of the property under law of inheritance and did not claim benefits under the Will. The Trial Court framed an issue viz. whether the suit on the basis of Hindu Law or Hindu Succession Act is not maintainable because of the allegation that the deceased left a Will. Learned Single Judge of this Court dismissed the suit on this issue holding that Section 8 of the Hindu Succession Act, 1956 would apply to a male Hindu who died without leaving a valid Will and where there was a valid Will, property cannot devolve under Section 8. The Division Bench set aside the findings and held that Appellant was entitled in law to confine his claim on the basis of Hindu Succession Act. This judgment was followed by another Division Bench in *Vikram Singh and Another v. Ajit Inder Singh*, 2014 SCC OnLine Del 847 and learned Single Judge in *M/s. Uma Ghate v. Mr. Umesh Phalpher*, 2016 SCC OnLine Del 6179, holding that upon the death of a person if there is a bequest by way of a Will, legal heirs can elect whether to proceed to inherit the estate of the deceased as per the Will or inherit the estate as legal heirs and successor-in-interest of the deceased.*

34. *The proposition of law that comes forth is that even if there is a Will, a legatee can choose to confine his relief to proceed to inherit the estate of the deceased as legal heir and*



*successor-in-interest of the deceased. In the present case, in my view, Defendants No. 1 and 2 had elected to inherit the estate of Smt. Hans Kaur by succession under Section 8 of the Hindu Succession Act, 1956 and this is clear from two-fold facts. Firstly, during the suit, it was never pleaded or proved that Smt. Hans Kaur had executed the alleged Will dated 26.06.1978. Not even a photocopy of the Will was filed. In their presence and with their consent, the Court passed an order that no issues arose for trial of the suit and the final decree was passed. This decree has not been challenged till date, which is the first indicator of Defendants No. 1 and 2 having elected to abandon their rights under the alleged Will dated 26.06.1978, besides the fact that even till date, Defendants No. 1 and 2 have not filed a probate petition. Even thereafter, when the execution was filed, on 15.02.2019, Defendants No. 1 and 2 stated before the Court that they shall file an undertaking to deposit the keys in respect of the vacant possession with the Registrar General of this Court within two months. Court directed them to file the undertaking within one week. Again, on 26.02.2019, Defendant No. 2 undertook on his behalf as also on behalf of Defendant No. 1 that vacant and peaceful possession will be handed over to the auction purchaser within one month of the auction by the Local Commissioner. The undertaking was accepted by the Court. After the Local Commissioner was appointed and the matter came up before the Court on 28.01.2024, yet again Defendants No. 1 and 2 along with Defendants No. 3 to 5 requested the Court to be given one additional month to vacate the property and undertook to hand over vacant peaceful possession to the Local Commissioner on or before 30.09.2024. Court recorded their undertaking separately and held that they shall remain bound by the same. Each of these orders not only indicate a solemn undertaking to the Court on multiple occasions to vacate the property but also indicates the clear abandonment of the rights of Defendants No. 1 and 2 to claim under the alleged Will dated 26.06.1978. Having clearly elected to give up the rights under the Will dated 26.06.1978, Defendants No. 1 and 2 cannot today assert a right to claim the suit property to the exclusion of others.*

*35. For all the aforesaid reasons, this Court finds no merit in the review petition and the same is dismissed.”*

6. The learned Single Judge examined the Review Petition on merits and also exhaustively considered the aspect of delay. The application for condonation of delay, filed in support of the said



Review Petition, in the same Judgment, suffered a similar fate in the following terms:-

*“8. Heard learned counsel for the Plaintiffs and learned Senior Counsel for Defendants No. 1 and 2.*

*9. In order to seek condonation of delay, a party must satisfy the Court that ‘sufficient cause’ prevented the party from approaching the Court within the prescribed period of limitation. Statute of limitation is founded on public policy and as held by the Supreme Court from time to time, the aim is to secure peace and to suppress fraud and perjury, so as to quicken diligence and prevent oppression. In Basawaraj (supra), the Supreme Court held that sufficient cause is a cause for which the party cannot be blamed and therefore, this expression embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the viewpoint of a reasonable standard of a cautious man, which means that party should not have been negligent or the act should not suffer for want of bona fides. Approach of the Courts, while condoning delay, must be to ensure that the discretion is exercised judiciously and even though limitation may harshly affect rights of a party but it has to be applied with all rigour. Limitation cannot be extended for convenience of parties or on equitable grounds as that would amount to legislating.*

*10. With this in the backdrop, it needs to be examined whether Defendants No. 1 and 2 are deserving of exercise of discretion in their favour by condoning an inordinate delay of 2828 days in filing the present review petition. I have carefully gone through the application seeking condonation of delay. The singular reason in support of the plea of condonation is that Defendants No. 1 and 2 came upon the original Will dated 26.06.1978 executed by Smt. Hans Kaur, when they approached the Union Bank of India for copy of the documents directed by the Court vide orders dated 20.05.2024 and 21.08.2024. It is averred that they had no idea that the original Will was with the bank.*

*11. As rightly flagged by counsel for the Plaintiffs, this plea is completely belied by the written statement filed by Defendants No. 1 and 2 on 05.08.2016, wherein a plea was taken that Smt. Hans Kaur had bequeathed the suit property in favour of late Shri Raj Kumar Arora and that the suit property was mortgaged by the said Defendants with Union Bank of India to secure the loan from the bank. It is only natural that the*



*property was mortgaged once the documents were furnished by Defendant No. 1 and/or Defendant No. 2 and if the Will dated 26.06.1978 is allegedly now found as a part of the documents, the question is whether Defendants No. 1 and 2 can today plead that they have no knowledge that the alleged original Will was with the bank and the answer can only be in the negative. Therefore, clearly by their own stand, Defendants No. 1 and 2 were aware of the purported Will from the date the property was mortgaged, if not prior thereto and certainly on the date when the written statement was filed i.e., 05.08.2016. Therefore, plea that Defendants No. 1 and 2 became aware of the alleged Will only when they visited the bank, post orders passed by this Court, is completely false and contrary to their own stand in the written statement. No other ground is taken in the application. This Court is of the view that Defendants No. 1 and 2 have not made out sufficient cause for condonation of delay and instead, the application is predicated on a false premise, which in itself is enough to dismiss the application.*

*12. The judgments relied upon by Mr. Bakshi, learned Senior Counsel for Defendants No. 1 and 2, cannot be of any avail. In Raheem Shah (supra), the delay in filing the regular first appeal against the decree of the Trial Court was 52 days. The Supreme Court observed that the delay not being inordinate, the first Appellate Court and the High Court were not justified in dismissing the appeal. In Mool Chandra (supra), the delay was 425 days in filing original application before the Administrative Tribunal and the Supreme Court found as a matter of fact that the delay was succinctly explained by the Appellant that there was no intimation of withdrawal of the earlier O.A. by his counsel and the order dated 10.08.2018 did not reflect that such withdrawal was with the consent of the Appellant. The Supreme Court also found that on merit, the High Court had proceeded to confirm the order of the Tribunal on the footing that penalty imposed on the Appellant was a minor penalty, overlooking that in the earlier round of litigation, it was held that punishment of dismissal was disproportionate to the alleged act. This Court sees no similarity in the two cases, either on the number of days of delay as also the reasons for condonation.*

*13. Accordingly, this application is dismissed as Defendants No. 1 and 2 have been unable to make out sufficient cause for condonation of delay.*

*14. While this Court sees no reason to enter into the merits of the review petition in light of the order passed in this application yet, on the insistence of Mr. Bakshi, learned Senior Counsel for Defendants No. 1 and 2 that there is merit in the review petition and considering that arguments were*



*canvassed by the parties, I proceed to examine the petition on its merits.”*

7. We see no infirmity in the Judgment dated 22.05.2025 passed by the learned Single Judge dismissing either the application for condonation of delay in filing of the Review Petition or in the dismissal of the Review Petition itself, and agree with the reasoning and conclusions thereof.

8. We do not wish to repeat the conclusions and the material on record basis which such conclusions were drawn. However, this Court would like to supplement the same with the following aspects.

9. At the outset, it needs to be stated that the premise of the Appellants herein does not appear to be *bona fide*. The pleadings of the suit would reveal that the suit property was mortgaged to the Union Bank of India by the Appellants herein. The relevant paragraph indicating the same is reproduced herein for the sake for convenience:

*“15. That in reply to para no. 15 it is submitted that since Defendant no. 1 is the exclusive owner and in possession of the suit property. Defendant no. 1 is within her rights to deal with the suit property in any manner. That it is further submitted that the suit property is already mortgaged by the answering Defendants with Union Bank of India to secure loan from the bank. That there is no question of Defendant no. 1 selling the suit property to anyone and had no intention to alienate, transfer or part with the possession in any manner.”*

10. The case of the Appellants set-up today is that they are unaware of the documents that were submitted in support of the application for the loan availed from the Union Bank of India. Given the fact that it was the Appellants themselves who had applied for the loan, we are at a loss to appreciate or understand the plea now taken by the Appellants that they were unaware of the documents submitted by



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them in support of the loan application. The Will dated 26.06.1978, which the Appellants state that they were unaware of, was, in fact, part of the documents submitted in support of the loan application. The fact that this document was in possession of the Bank is clearly evidenced by the Letter dated 19.08.2002, which is the legal opinion in respect of whether the suit property could have been mortgaged or not. The same clearly mentions that it had examined the Will dated 26.06.1978 executed by Ms. Hans Kaur.

11. Given that the Appellants herein, admit to have mortgaged the said property, this Court finds it difficult to accept the assertion that the Appellants were unaware of the Will, which was a document examined by the Bank before subjecting the property to being mortgaged.

12. The pleadings would also reveal that, on various occasions, it has been asserted by the Appellants themselves that they had been repaying the loan that had been availed from the Union Bank of India, and that the amount owed was progressively reducing. This would clearly indicate that the Appellants had been actively engaging with the bank and its officials, with full knowledge of the entire transaction.

13. Purely on this singular point, this Court believes that there is absolutely no merit in any of the contentions of the Appellants, and the present Appeal, in fact, deserves to be dismissed with exemplary costs.

14. This Court would like to re-count, *albeit* briefly, few of the other aspects relating to the merits before proceeding to examine the question of the colossal delay in filing various proceedings, *inter alia*, the Review Petition as well as the present Appeal.



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15. The Plaintiffs/Respondents herein had filed a suit for partition, possession, injunction and rendition of accounts as against the Appellants herein on the basis of intestate succession. The Appellants herein, who were the Defendants in the said suit, had filed their written statement whereby they denied any intestate succession and specifically pleaded that the suit property had been bequeathed to the husband of Appellant No. 1 herein, and as a result, the plea of Plaintiffs/Respondents herein on the basis of intestate succession was not maintainable.

16. It would appear that some time during the proceedings in the suit, the Plaintiffs/Respondents filed an application seeking production of documents in support of which the Defendants/Appellants herein were denying the claims of the Plaintiffs/Respondents herein. Upon the Court pointing out to the Plaintiffs/Respondents herein that such an application would perhaps be to their detriment, as they would, by that application be permitting the Defendants/Appellants herein to adduce evidence in their support, the Plaintiffs/Respondents herein sought leave to withdraw the same. No such Will in support of their claim was produced by the Appellants, despite this opportunity.

17. In fact, from the inception of the suit till the present date, no Will dated 26.06.1978 as claimed by the Appellants herein has seen the light of the day.

18. The suit came up for final hearing on 20.12.2016, and on the said date, both, the preliminary decree for partition of the suit property as well as the final decree for partition by sale of the property and distribution of the sale proceeds amongst the parties to the suit, based



on the shares as determined by the preliminary decree, came to be passed.

19. The Appellants herein were also directed to vacate the premises and to deliver possession to the purchaser of the said property.

20. The said decree was sought to be executed by the Respondents and came up before this Court on various dates. The Appellants, being the Judgment Debtors, on not less than three dates, being 15.02.2019, 26.02.2019 and 27.09.2019, undertook to hand over the vacant physical possession to the Auction Purchaser.

21. What the Appellants are seeking to do today is; firstly, propagate, what appears to be a falsehood, that they were unaware of the existence of a Will dated 26.06.1978, and secondly, to resile from the undertakings that they have made before this Court by filing the Review Petition as well as the present Appeal, and carry out all of the above actions at an extremely belated stage with highly unbelievable stories.

22. With respect to the aspect of the falsehood, this Court has already dealt with the same in the foregoing paragraphs.

23. Now, coming to the aspect of limitation, we would like to reiterate the principles as laid down in the judgment rendered by the Hon'ble Apex Court in *Pathapati Subba Reddy (Died) By L.Rs. and Others v Special Deputy Collector (LA)*<sup>4</sup>. The relevant paragraph of the same is reproduced herein for the sake of brevity:

*“23. In Basawaraj v. Special Land Acquisition Officer, this Court held that the discretion to condone the delay has to be exercised judiciously based upon the facts and circumstances of each case. The expression ‘sufficient cause’ as occurring in*

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<sup>4</sup> 2024 SCC OnLine SC 513



*Section 5 of the Limitation Act cannot be liberally interpreted if negligence, inaction or lack of bona fide is writ large. It was also observed that even though limitation may harshly affect rights of the parties but it has to be applied with all its rigour as prescribed under the statute as the courts have no choice but to apply the law as it stands and they have no power to condone the delay on equitable grounds.*

*25. This Court in the same breath in the same very decision vide paragraph 15 went on to observe as under:*

*“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.”*

*(emphasis supplied)*

*26. On a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that:*

- (i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;*
- (ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;*
- (iii) The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be*



*construed in a strict sense whereas Section 5 has to be construed liberally;*

*(iv) In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act;*

*(v) Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various facts such as, where there is inordinate delay, negligence and want of due diligence;*

*(vi) Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;*

*(vii) Merits of the case are not required to be considered in condoning the delay; and*

*(viii) Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision."*

24. The present matter is one that is egregiously belated and premised on what this Court believes is a highly fantastic story.

25. We now come to the aspect of the attempt on the part of the Appellants to somehow wriggle out of or resile from the various undertakings given before this Court and as recorded in the Orders as set out herein.

26. This Court deprecates the manner in which the Appellants herein had sought to withdraw themselves from their solemn undertakings. It is trite law that the undertakings given before this Court, if sought to be withdrawn, can only be done within a



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reasonable period of time and only given in extenuating circumstances which would require detailed explanation.

27. In the present case, the reasons sought to be given for now seeking to resile from the said undertakings are completely unacceptable.

28. This Court is also in agreement with the finding of the learned Single Judge that the Judgment dated 22.05.2025 wherein it has been held that the Appellants, in fact, elected to give up any claim on the basis of the Will and given the consistent conduct of the Appellants, right from the date of passing of the Judgment, i.e. 20.12.2016, to giving various undertakings before this Court. It is apparent that they have chosen to be governed by the Decree passed by this Court which was for an equitable distribution of the suit property and not on the basis of the Will.

29. In view of the aforestated facts and circumstances, this Court is of the opinion that the present Appeal needs to be dismissed.

30. Accordingly, the present Appeal, along with pending application(s), if any, is disposed of in the aforesaid terms.

**ANIL KSHETARPAL  
(JUDGE)**

**HARISH VAIDYANATHAN SHANKAR  
(JUDGE)**

**AUGUST 7, 2025/rk/va**