



2026:DHC:4462



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

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Reserved on: 12th May, 2026

Pronounced on: 19th May, 2026

+ **RFA NO. 488/2023, CM APPL. 33372/2023 (stay), CM APPL. 1917/2025 (for Additional Documents)**

RAKESH KAPOOR

S/o Late Sh. V.N. Kapoor

R/o 3/78, Shyam Singh Building,

Gopi Nath Bazar, Delhi Cantt.

.....Appellant

Through: Mr. Shashank Agrawal, Advocate.

versus

1. **SONIA VENUGOPAL**

D/o C.P. Venugopal

R/o B351, Silver Tulip

Mittal Road Orchards

Shankar Dhani, Bhola,

Gurgaon-123412 (Haryana)

....Respondent No.1

2. **SAVEENA VENUGOPAL**

D/o C P Venugopal

M11, Jalayu Towers,

Sector-56, Gurgaon,

New Delhi-110024.

....Respondent No. 2

Through: Mr. Kirti Uppal, Sr. Adv., Mr. Kartikeya Rastogi Adv., Ms. Tamanna Kavdia Adv., Mr. Saanil Patnayak, Advocate.

+ **RFA NO. 545/2023, CM APPL. 35535/2023 (stay), CM APPL. 1918/2025 (for Additional Documents)**

VEENA KHANNA

Since Deceased Through LR's



(i) Ashish Khanna
S/o Veena Khanna
R/o 201, Clarke Manor,
Kadbi Chowk, Nagpur-440014

(ii) Ritika Punj
D/o Veena Khanna
R/o B12/904, RPS Savana, Sector 88,
Faridabad, Haryana.

....Appellants

Through: Mr. Shashank Agrawal, Advocate.

versus

1. **SONIA VENUGOPAL**
D/o C.P. Venugopal
R/o B351, Silver Tulip
Mittal Road Orchards
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2. **SAVEENA VENUGOPAL**
D/o C P Venugopal
M11, Jalayu Towers,
Sector-56, Gurgaon,
New Delhi-110024.

...Respondent No. 2

Through: Mr. Kirti Uppal, Sr. Adv., Mr.
Kartikeya Rastogi Adv., Ms.
Tamanna Kavdia Adv., Mr. Saanil
Patnayak, Advocate.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.



1. By the present Judgment, this Court shall adjudicate upon two Applications, *namely CM APPL. NO. 33374/2023 and CM APPL. NO. 35537/2023, preferred by the Appellants, seeking condonation of delay of 6 years and 9 months, in filing the present Appeals bearing no. RFA No. 488/2023 and RFA No. 545/2023, respectively.*

CM APPL.NO. 33374/2023 (Condonation of Delay) in RFA No. 488/2023 & CM APPL. NO. 35537/2023 (Condonation of Delay) in RFA No. 545/2023:

2. The Appeals under Section 96 of the Code of Civil Procedure, 1908 (*hereinafter referred to as 'CPC'*) has been filed on behalf of the Appellants against the *ex-parte* Judgment and decree dated 30.07.2016, which is supported with Applications bearing nos. CM APPL. 33374/2023 and CM APPL.35537/2023 under Section 5 of the Limitation Act, 1963 read with Section 151 CPC for *condonation of delay of 6 years and 9 months, in preferring the present Appeal.*

3. It is submitted in the Application that the Respondents filed two Suits on 31.10.2015, namely Suit No. 583/16/15 and Suit No. 584/16/15, against Appellants Rakesh Kapoor and Veena Khanna, respectively. The Respondents/Plaintiffs filed two *Suits for Specific Performance of the Agreements to Sell dated 29.01.2011 and 04.05.2010 in respect of their individual 1/3rd shares in Property No. B-107, Amar Colony, Lajpat Nagar IV, New Delhi, or, in the alternative, a claim for damages.*

4. It is pertinent to note that Veena Khanna was being represented in her litigation by Rakesh Kapoor as her POA holder. The Appellants **Rakesh Kapoor and Veena Khanna**, filed their *Written Statement on 19.12.2015,*



in the respective Suits wherein the Suit of the Plaintiff was contested on various grounds, including that the Suit was barred by limitation.

5. The Appellants, i.e. Rakesh Kapoor and Veena Khanna, was represented by their Advocates, Ms. Jyoti Dutt Sharma and Mr. Rahul Sharma. He relied totally upon the Counsels, but they did not appear in the Court from 07.01.2016 and *the Appellant Rakesh Kapoor was proceeded ex-parte on 02.05.2016. The Appellant, Veena Khanna was proceeded ex-parte on 27.11.2015, in their respective Suits.*

6. The Appellant/Sh. Rakesh Kapoor was around 60 years old and suffered from paralysis of left hand and arthritis in the left knee and was, therefore, unable to attend the matter personally.

7. The Appellants were not aware that they had been proceeded *ex-parte*.

8. The learned Trial Court decreed the Suit of the Plaintiffs *vide* ex-parte Judgment dated 30.07.2016, thereby directing the Appellants, to execute the Sale Deed in respect of their 1/3rd share of Property bearing No. B-107, Amar Colony, Lajpat Nagar IV, New Delhi, within two months from the date of Judgment.

9. The Respondents/Plaintiffs then filed an *Execution Petition bearing No. EX/05/2017 and Execution Petition bearing No. EX/06/2017*, against the two decrees.

10. The Appellants were served with the Execution Petitions and they both engaged *Mr. Vivek Sharma, Advocate* in the year 2017, for legal representation. The learned Advocate despite knowing full well that it was an *ex-parte* Judgment against the Appellants, chose not to file any Application for setting-aside of the *ex-parte* decree, nor did he file any



Appeal before the superior Court and kept the Appellant/ Rakesh Kapoor, who was also representing his sister Veena Khanna all throughout, in doubt about his representation in the matter. The Appellants were time and again, simply told that their interest in the matter was being taken care of and there would be no Order against him. He was assured that he would emerge victorious in the litigation and that all the legal steps were being taken as were available in the facts of the case.

11. The Appellants being an old lay person, had no choice but to believe the words of a professional and to rely on his good Judgment, for securing his interest in the matter. The Appellants in good faith and *Bonafide* belief that the Advocate would do whatsoever is necessary, to get the Order set-aside.

12. Hitherto, the Appellants had no reason to believe that the Advocate was actually jeopardising his interest in the matter, by not filing an Appeal or an Application to set-aside the *ex-parte* decree against the Appellants and was merely appearing in the Execution Case.

13. The Advocate thereafter, filed objections on 22.03.2021 in the two respective Execution Petitions, which were ultimately dismissed by the learned ADJ *vide* Order dated 22.02.2022. *A separate Order was made on the same day i.e. 22.02.2022 that the decree be executed within one month.*

14. Thereafter, the Appellants confronted the Advocate about his approach, and he told the Appellants that he would be filing a CM (Main) against the Order of the Executing Court, before this Court. The concerned Advocate also gave a filing number of CM (Main), which he claimed to have been filed. However, on checking the website of this Court, the Appellants came to know that the filing number was false and it was of



some other matter. On confrontation, the Advocate took a U-turn and informed that he had not filed the Appeal.

15. On realising the alleged fraud committed upon the Appellants, he contacted Advocates known to him, who then told the Appellant, i.e. Rakesh Kapoor, about the serious lapses in the matter and the fact that the case was being conducted in a negligent manner by not pursuing the remedies available to them.

16. The Appellants thereafter, had no option but to file a Complaint against the said Advocate with Bar Council of Punjab and Haryana and Bar Council of India, for his grave professional misconduct.

17. This fact also shows that no remedial measures could be undertaken on account of aforesaid lapses, which were not attributable to the Appellants.

18. The Appellant Rakesh Kapoor through the Counsel, then filed an Application under Order 9 Rule 13 CPC, on 24.05.2022. Similar Application was filed by Smt. Veena Khanna, through her POA Sh. Rakesh Kapoor. When the matter came up for hearing, it was found that a similar Application had been filed in 2017, which was withdrawn.

19. The Application of Veena Khanna was also withdrawn, about which the present Appellants being legal heirs, were not aware; as Veena Khanna died sometime after the filing of the Application.

20. The Appellant/Rakesh Kapoor asserted that being 62 years of age at that time, he did not understand the technicalities of law and nomenclature of Applications and, he never recollected the Application filed on their behalf. The Appellant/Legal heirs of late Veena Khanna, were taken aback by the turn of events, and have now filed the First Regular Appeal.



21. The delay of 6 years and 9 months in filing the Appeal, is claimed to be on account of professional lapses on the part of the Counsel.

22. Reliance is placed on *Lala Mata Din vs. A. Narayanan*, (1969) 2 SCC 770 to submit that the mistake of a counsel is a sufficient ground for condonation of delay. The Appellants were prevented due to sufficient cause from approaching the Court, to challenge the *ex-parte* decree. It is, therefore, submitted that the delay of 6 years and 9 months in filing the Appeal, may be condoned.

23. The *Respondents/Decree Holders in their Reply to the Applications*, took a preliminary objection that the Applications are false, frivolous, warranting rejection solely on this basis. The Appellants have not approached the Court, with clean hands and is guilty of concealing material facts.

24. It is submitted that at the time of signing the Agreement to Sell dated 29.01.2011, the father of the Respondents i.e. Mr. C.P. Venugopal, who was a senior citizen aged 68 years and was suffering from failed kidney. The Appellants deceived the father of the Respondents into entering into an Agreement and took an advance payment on the promise that the Sale Deeds would be executed, within three months. It is only later; it became evident that the Appellants did not take any steps for transfer of property in terms of the Agreement to Sell. Thereafter, Mr. C.P. Venugopal died due to illness. The Respondents filed Suit for Specific Performance bearing Suit Nos. 583/16/15 and 584/16/15 on 31.10.2015. The Written Statement was filed by the Appellant, in Suit No. 583/16/15, after which, he abstained appearing in the Court from 07.01.2016. The Suit was decreed on 30.07.2016,



25. The Execution Petition Nos. EX/05/2017 and EX/06/2017 were filed, on 24.12.2016. The Appellant, appeared in person on 18.03.2017 and sought time to file the objections. A *vakalatnama* was filed on behalf of the Appellants on 12.05.2017 along with an Application under Order IX Rule 13 CPC and an Application for stay.

26. The Appellants have concealed that after the notice of Execution Petition was served, they filed an Application under Order IX Rule 13 CPC in CIS No. 39/2017 and CIS No. 40/2017, on 17.05.2017, through his counsel, Mr. S.S. Tyagi and Associates, praying for setting-aside of the *ex-parte* Judgment dated 30.07.2016.

27. The Appellant, i.e. Sh. Rakesh Kapoor, has further suppressed that he had appeared in the Execution Petition on 08.08.2018 and given a Statement of withdrawing the Application under Order IX Rule 13 CPC and stating that he was willing to execute the Sale Deed in respect of his 1/3rd share in the Suit Property upon receipt of balance consideration amount of Rs.14,00,000/-. He stated that he did not want to proceed with an Application under Order IX Rule 13 CPC and the same was consequently dismissed, as withdrawn.

28. The learned ADJ, thereafter directed the Decree Holder, to deposit the sum of Rs.14,00,000/- in the Court, within 30 days. The Respondents thereafter, deposited the amount by way of FDR dated 14.12.2018.

29. It is not open in law for the Appellants having withdrawn their Application under Order IX Rule 13 CPC, to file an appeal before this Court against the *ex-parte* Judgment and decree. The Appeal is liable to be dismissed as not maintainable.



30. It is further claimed that the Appellant is guilty of falsely asserting in the Application that upon being served with the Execution Petition, he had sought the legal representation of Mr. Vivek Sharma, Advocate in the year 2017. In fact, this Counsel had filed his *vakalatnama* on behalf of the Appellant only on 24.03.2021. The main contention of the Appellant on the face of it, is false and misleading.

31. On 08.08.2018, the Appellant/Sh. Rakesh Kapoor, withdrew the *vakalatnama* and appeared in person and made a Statement that he was willing to execute the Sale Deed. His Statement was recorded and the matter was posted for 05.10.2018. Subsequently, pursuant to the Statement, the sale consideration was deposited by the Respondents.

32. The Court Commissioner was appointed by the Court on 14.05.2019 for the purpose of facilitating the execution of decree. The Court Commissioner after due inspection, filed his Report on 30.05.2019.

33. Subsequently, on 15.11.2018, 15.02.2019, 23.02.2019, 30.05.2019 and 21.10.2019, the matter was adjourned because the Appellant failed to appear in person or through the Counsel.

34. On 07.03.2020, fresh objections were raised by the Appellant due to COVID. There were ineffective hearings and on 15.01.2021, learned Counsel for the Appellant, took further time for presenting the case law.

35. On the next date i.e. 08.02.2021, learned Counsel for the Appellant again sought adjournment. On 24.03.2021, Mr. Vivek Sharma, Advocate for the Appellant, filed a fresh objection in the Petition box of the Court. The adjournment was again sought by Mr. Vivek Sharma on 01.11.2021 for filing further case laws. On 23.12.2021, the Appellant failed to appear.



Finally, on 22.02.2022, the Court dismissed the Objections with the cost of Rs.20,000/-.

36. On the next date i.e. 28.03.2022, none appeared on behalf of the Appellant. On the next date of hearing i.e. 29.04.2022, the Court extended the time for execution of the Sale Deed by 30 days for the Appellant, to execute the Sale Deed. On 23.09.2022, a new counsel started appearing for the Appellant. On 28.11.2022, the Court asked the Judgment Debtor/Appellant, to deposit the documents of Property to facilitate the registration of the Sale Deed. On 27.01.2023, the Appellant denied being in possession of any original documents and submitted some illegible documents before the Court. He was directed to file the legible copies within three days. Again on 03.02.2023, the Appellant failed to appear in the Court.

37. On 03.06.2023, the Court directed the Appellant, to file the documents again in the Court, for the purpose of registration.

38. After the Application under Order IX Rule 13 CPC was withdrawn by the Appellant on 08.08.2018, there have been 56 hearings in the Execution Petition during which, the Appellant has not either appeared in person or through Counsel or has sought adjournment on 11 hearings. Therefore, the Executing Court had provided sufficient opportunities to the Appellant, to present his case. The present Appeal is clearly an afterthought and simply a dilatory tactic, which is not sustainable.

39. On 03.06.2023, the Court Commissioner was recalled, who appeared on 21.07.2023. Thereafter, on 31.08.2023, 23.09.2023 and 18.11.2023, due process was followed for registration of the property. The Respondents had even paid the property tax for the previous 15 years on 21.03.2023. The Respondents are in possession of the Property since the beginning.



40. It is asserted that the grounds on which the Application under Order IX Rule 13 CPC was filed, are completely different from the grounds taken *herein* for condonation of delay in filing the Appeal.

41. The Condonation Application of the Appellant, is liable to be dismissed on the ground that the Appellant had previously contested the Order dated 22.02.2022 of dismissal of his objections to the Execution Petition by initiating CM (Main) Petition Nos. 893/2023 and 887/2023 before this Court but had voluntarily withdrawn them on 25.05.2023. i.e. on the first date, when the matter was taken up. ***The non-disclosure of this fact by the Appellants in the RFAs and in the Applications for Condonation of delay, clearly tantamount to suppression of material facts.***

42. The Respondents further assert that the Complaint dated 21.04.2022 had been filed by the Appellant against the Mr. Vivek Sharma, Advocate, however, despite being properly represented on each and every date by his Counsel, the Appellant chose not to file an Appeal till 01.06.2023. The failure to file the present Appeal promptly, after lodging the false Complaint, raises serious questions about the veracity of the claims of the Appellant. It is quite clear that the current RFA is nothing but a dilatory tactic.

43. The Reliance is placed on Balwant Singh (Dead) vs. Jagdish Singh and Others, AIR 2010 SC 3043; Pundlik Jalam Patil (deceased by Lrs) vs. Eex. Eng. Jalgaon Medium Project and Anr., AIR 2008 SC (Supp) 1025; Yashpal Jain vs. Sushila Devi and Others, Civil Appeal No. 4296/2023 decided by the Hon'ble Supreme Court of India on 20.10.2023; Majji Sannemma @ Sanyasirao vs. Reddy Sridevi and Others, Civil Appeal No. 7696/2021, decided by the Hon'ble Supreme Court of India on 16.12.2021.



44. *On merits*, all the averments made in the Application, have been controverted. It is submitted that the present Application for Condonation of delay, is liable to be dismissed.

Submissions heard and the record perused.

45. The Appellants have sought condonation of Delay of 6 years and 9 months, by way of the present Application. The main contention of the Appellant in his Application, is the negligence of the Advocate, **Mr. Vivek Sharma** in ensuring that the appropriate steps were being taken against the impugned *ex-parte* Judgment, which he failed to do.

46. In this context, it would be pertinent to observe that an Execution Petition Nos. EX/05/2017 and EX/06/2017 was filed on **26.12.2016** and the Notice of the same was issued to the Appellant. The *vakalatnama* was filed by Mr. S.S. Tyagi and Associates on behalf of the Appellant on 12.05.2017. It is evident that till then Mr. Vivek Sharma Advocate was not even in the picture.

47. Pertinently, an Application under Order IX Rule 13 CPC was filed by Mr. S.S. Tyagi and Associates for the Appellant on 12.05.2017. Thereafter, on 08.08.2018, the Appellant, Mr. Rakesh Kapoor appeared himself in the Court and gave a Statement that he was willing to execute the Sale Deed in favour of the Respondents in respect of his 1/3rd share. Consequently, the Application under Order IX Rule 13 CPC was withdrawn by Mr. Rakesh Kapoor.

48. Till this time, the Appellant was duly represented by Mr. S.S. Tyagi and Associates, who had even filed an Application under Order IX Rule 13 CPC. It is evident from the record that the Appellant himself was inclined to abide by the Decree and had no intention to challenge it further, and he



made a Statement in the Court on 08.08.2018, to abide by the Judgment and to execute the Sale Deed in favour of the Respondents.

49. Not only this, as a consequence of his willingness, the Application under Order IX Rule 13 CPC, was withdrawn. The Appellant was duly represented by Mr. S.S. Tyagi and Associates in the year 2016-2017 and even in 2018 and therefore, his assertion that he was not properly advised by his Advocates, to prefer an Appeal, is patently not supported by the record. Ordinarily, against an *ex-parte* Judgment and decree, it is Application under Order IX Rule 13 CPC, that is filed in the first instance. The Advocates on behalf of the Appellant, had taken the necessary steps, but were not pursued purely because the Appellant had no inclination to challenge the Judgment.

50. Further, Mr. Vivek Sharma, Advocate got engaged by the Appellant from 15.01.2021 to July, 2022. During this period, on various dates, the Appellant had been appearing in person before the Court. The *vakalatnama* was filed by Mr. Vivek Sharma on 24.01.2021.

51. Soon after putting an appearance, Mr. Vivek Sharma had filed the Objections under Section 47 read with Order 21 Rule 58 CPC, on 24.03.2021. These Objections of the Appellant got dismissed *vide* Order dated 20.02.2022 against which, two CM (Main) were filed by Mr. Shashank Aggarwal, Advocate, who is till now representing the Appellant. These CM (Main) Nos. 893/2023 and 887/2023, were also withdrawn by him with liberty, on 25.05.2023.

52. The above chronology clearly shows that Mr. Vivek Sharma was not negligent, as has been asserted by the Appellant.

53. It is also significant to observe that the present Counsel, Mr. Shashank Aggarwal has been representing the Appellant since July, 2022 and he also



did not choose to file the Appeal till 10.04.2023. In the present Application, though a finger pointing had been done towards Mr. Vivek Sharma, but the Appellant was being represented by different Counsels, at different times. Each Counsel had acted in accordance to their wisdom.

54. It is quite evident from the conduct of the Appellant himself that he had no inclination to challenge the Judgment and consequently, the Appeal was not filed. It is the simplest way of shifting the blame on the Advocates for the vested interest of the litigant himself. It is not a case of negligence on the part of the Advocates, as has been asserted by the Appellant but in fact, seems to be a conscious decision of the Appellant, to not challenge the *ex-parte* decree dated 30.07.2016.

55. Learned counsel for the Appellant has vehemently contended that the impugned Judgment and decree is a nullity and such a Judgment can be appealed at any point of time. It is asserted that in the impugned decree, there are no directions to the Respondents, to deposit the balance amount, making it a null and void.

56. Reliance is placed on *Anjana Rajbonshi vs. Pradip Tibrewal and Ors.*, Gauhati Law Reports 2021 Volume 3, Page 1. In the said Judgment, reference was made to the case of *Rina Bora vs. Sangeeta Chowdhury & Anr.*, (2019) 5 GLR 607 wherein it was held that non-mentioning of a specific time period to complete the part of the Plaintiff-purchaser in a decree for Specific Performance of contract, shall be hit by Section 28 of the Specific Relief Act, 1963. The Rule 12A of Order XX CPC had been brought in by way of amendment of the CPC, in the year 1976, to make the Code in consonance with Section 28 of the Specific Relief Act, 1963.



57. Hence, the intention appears to be that the vendor, who has suffered a decree for Specific Performance of Contract does not have to endlessly wait for the consideration money in respect of such sale. Accordingly, it was held that owing to non-compliance of Rule 12A of Order XX CPC, the decree of Specific Performance of Contract relating to Agreement to Sell, becomes inexecutable.

58. This Judgment, however, is not applicable to the facts of the present case. *Vide* the impugned *ex-parte* Judgment dated 30.07.2016, the Appellant was directed to execute the Sale Deed, within two months from the date of the Order. Furthermore, it was directed that the Plaintiffs were entitled to Specific Performance of Agreement to Sell dated 29.01.2011 and Agreement to Sell dated 04.05.2010.

59. In the impugned judgement, not only was a specific timeframe given for execution of the Sale Deed, but it was also observed that the Plaintiffs were entitled to Specific Performance of Agreement to Sell dated 29.01.2011 and Agreement to Sell dated 04.05.2010 thereby implying that they were obliged to pay the balance sale consideration, which was of Rs.14,00,000/-, for the purpose of getting the Sale Deed executed. Once, the time for executing the Sale Deed was fixed as two months, it naturally follows that without depositing the balance amount, the Plaintiffs/Respondents would not have been entitled to the execution of the Sale Deed.

60. The comprehensive reading of the impugned Judgment clearly reflects that it had been duly passed in accordance with law and did not suffer from the deficiency as alleged by the Appellant. It was definitely not a nullity as claimed by the Appellant. The judgment dated 30.07.2016 had been passed



by a Court of competent jurisdiction, in accordance with the provisions of Specific Relief Act and no circumstance, either lack of inherent jurisdiction or any other circumstance, which makes the Judgment, null and void.

61. In the case of Balvant N. Viswamitra and Others vs. Yadav Sadashiv Mule (Dead) Through LRs and Others, (2004) 8 SCC 706 it was held that a Judgment passed by a Court, which lacked inherent jurisdiction was *non est* and *void ab initio*. This judgment is clearly not applicable to the facts at hand.

62. It may also be observed that the balance sale consideration for a sum of Rs.13,79,748/-, in **RFA 488/2023**, had already been deposited in the Court, in 2018. The assertions of the Appellant, therefore, to claim that the decree is void and can be challenged at any time, is clearly not tenable.

63. In the Appeal, **RFA No. 545/2023**, learned Counsel for the Respondents, has submitted that the balance sale consideration could not be deposited because of the slippery conduct of the Appellant, who is not trustworthy, as he is not coming forth to execute the Sale Deed.

64. However, learned Senior Advocate submits that without prejudice the Appellant, the Respondents shall be depositing the balance amount under the Agreement to Sell in the Court.

Conclusion:

65. The aforesaid discussion shows that there is no explanation, what to talk of sufficient explanation for condonation of delay of 6 years and 9 months. *There is no merit in the present Applications, which is hereby dismissed.*



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66. In view of the Order passed in the aforesaid two Applications, the present Appeals, **RFA No. 488/2023** and **RFA No. 545/2023**, are **consequently dismissed** and disposed of accordingly.

67. The pending Applications, if any, also stand disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

MAY 19, 2026/R