



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



S.B. Civil Writ Petition No. 16193/2026

CNR: RJHC020781972026 | URN: CW / 34258U / 2026

Manni Devi Wife of Ramprasad, aged about 61 Years, Resident of Peepli Wali Dhani, Ward No. 23, Kasba Chaksu, at Present Village Mundiya, Tehsil Newai, District Tonk, Raj.

-----Petitioner

Versus

1. Bhuli Devi Wife of Shri Gangaram, Resident of Ward No. 23, Peepli Wali Dhani, Kasba Chaksu, District Jaipur.
2. Panchu Son of Jutha (Deceased), Resident Of Ward No. 23, Peepli Wali Dhani, Kasba Chaksu, District Jaipur.
3. State of Rajasthan, Through Tehsildar, Tehsil Chaksu, District Jaipur.

-----Respondents

For Petitioner(s)	:	Mr. Prahlad Sharma with Mr. Akshay Sharma Mr. Deepak Choudhary
For Respondent(s)	:	Mr. R.K. Agarwal-Sr. Advocate with Mr. Mohit Khandelwal Mr. Aditya Gupta Mr. Pranav Sharma Mr. Keshav Dadhich

JUSTICE ANOOP KUMAR DHAND

Order

01/09/2026

Reportable

1. The instant writ petition has been filed by the petitioner challenging the impugned order dated 04.08.2026 passed by the Board of Revenue (for short, "the Board") by which the revision petition submitted by the petitioner against the order dated 10.06.2026 passed by the Revenue Appellate Authority (for short, "the RAA") has been rejected.



2. Learned counsel for the plaintiff-petitioner (hereinafter referred as 'the petitioner') submits that a suit for declaration and permanent injunction was submitted by the petitioner against the defendant-respondent (hereinafter referred to as 'the respondent') before the Court of Sub Divisional Magistrate (for short, 'the SDM') wherein an interim order was passed on 14.05.2018 directing the parties to maintain status quo. Counsel submits that on account of non-appearance of the petitioner before the SDM, the said suit was dismissed in default on 25.03.2019. Thereafter, an application was submitted seeking restoration of the suit to its original number which came to be allowed on 25.01.2022 and consequently, the suit was restored to its original number. Counsel submits that a delayed appeal was submitted by the respondent against the aforesaid order after a lapse of more than three years before the Court of RAA along with an application submitted under Section 5 of the Limitation Act. Counsel submits that without condoning the delay, the learned RAA passed the impugned interim order dated 10.06.2026, by which effect and operation of the order dated 25.01.2022 was stayed. Counsel submits that without condoning the delay, the interim order could not have been passed by the RAA and the same has been passed illegally ignoring the due procedure of law, while keeping the appeal pending for its adjudication on merits. Counsel submits that aggrieved by the aforesaid order, a revision petition was submitted before the Board but the same was rejected vide impugned order dated 04.08.2026.

3. The core contention of arguments of the learned counsel for the petitioner is that without condoning the delay in filing the time



barred appeal, the interim order could not have been passed. Hence, under these circumstances, the petitioner has approached this Court by way of filing the instant petition seeking appropriate directions. In support of his contentions, counsel for the petitioner has placed reliance upon the judgment passed by the Hon'ble Apex Court in the case of **Gagandeep Pratishthan Pvt. Ltd. and Ors. Vs. M/s. Mechano and Anr.** reported in **AIR 2002 SC 204.**

4. Per contra, learned Senior Counsel appearing on behalf of the respondents opposed the arguments raised by counsel for the petitioner and submitted that the respondents were not aware about the order dated 25.01.2022 passed by the SDM. Hence, delay has occurred in filing the appeal against the said order before the RAA. Counsel submits that looking to the given facts and circumstances of the case, the RAA deemed it just and proper to pass the impugned order dated 10.06.2026, by which effect and operation of the order dated 25.01.2022 was stayed. Counsel submits that under the given circumstances, the interim order can be passed by the Appellate Court without condoning the delay. He has placed reliance upon the judgment passed by the Full Bench of this Court in the case of **Dilip Bhai Gajrota and Ors. Vs. Contractor Lime Gotan**, reported in **AIR 1996 Raj. 119.**

5. Counsel submits that the application filed under Section 5 of the Limitation Act as well as the appeal filed against the order dated 25.01.2022 is still pending adjudication on its merits before the first Appellate Court i.e. RAA and the revision petition against the impugned interim order dated 10.06.2026 was not maintainable before the Board, hence, the Board has not



committed any error in rejecting the revision petition submitted by the petitioner.

6. Lastly, he argued that the petitioner is at liberty to appear before the RAA and raise all the available objections. Therefore, under these circumstances, interference of this Court is not warranted and the instant writ petition is liable to be rejected.

7. Heard and considered the submissions made at Bar and perused the material available on record.

8. Perusal of the record indicates that a suit for declaration and permanent injunction was submitted by the petitioner against the respondent before the Court of SDM in the year 2018 wherein an interim order was passed on 14.05.2018. It appears that on account of non-appearance of the petitioner and his counsel, the case was dismissed in default on 25.03.2019 and thereafter, a restoration application has been filed, which was allowed vide order dated 25.01.2022.

9. A time barred appeal was submitted by the defendant against the aforesaid order dated 25.01.2022 after a delay of more than three years along with an application under Section 5 of the Limitation Act, seeking condonation of delay. While issuing notices to the petitioner of appeal as well as the application filed under Section 5 of the Limitation Act, the learned RAA passed the interim order on 10.06.2026, staying the effect and operation of the order dated 25.01.2022.

10. Aggrieved by the aforesaid, the petitioner approached the Board by way of filing a revision petition which was rejected by the impugned order dated 04.08.2026.



11. The legal issues which have arisen for due consideration before this Court is whether the First Appellate Authority i.e.. the RAA can pass the interim order without condoning the delay in filing a time barred appeal and whether the appeal is defective one unless the delay is not condoned by the RAA?

12. This fact is not in dispute that the appeal was preferred by the defendant against the order dated 25.01.2022 which was barred by the limitation and the same was submitted after a delay of more than three years.

13. It is well settled proposition of law that the question of limitation is not a mere technicality but pertains to the very jurisdiction of the Court, striking at the root of the Appellate Authority's competence to entertain the appeal. Unless the delay in filing the appeal is condoned, the appeal cannot be said to have come into existence in the eyes of law. In the absence of a validly instituted appeal, the Court lacks jurisdiction to hear and decide a time barred appeal on merits. Hence, unless delay is condoned in accordance with law, the appeal cannot be treated as having been validly instituted.

14. The Hon'ble Supreme Court, in the case of **Union of India & another versus Jahangir Byramji Jeejeebhoy**, reported in **2024 SCC OnLine SC 489**, has observed 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. The length of delay is a relevant matter which the court must take into consideration while considering 'whether the delay should be condoned or not', the Hon'ble Apex Court has been pleased to hold that while considering the plea for



condonation of delay, the Court must not start with the merits of the main matter. However, the Courts are required to condone delay based on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system. 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.

15. Thus, there is no dispute with regard to the proposition of law that the issue of condonation of delay in the proceeding must be decided at the first instance before delving into the merits of the case. However, if the delay is condoned, there is no bar on the Court to proceed with the case and decide the same on merits on the very day; keeping in view the nature of the proceedings, which may result in the final order. In the same manner, if the prayer for condonation of delay is rejected, the proceeding will automatically fail.

16. It is trite law that if an appeal, filed after the expiry of limitation period is accompanied by an application for condonation of delay, supported by an affidavit stating sufficient cause for delay in filing the said appeal and if the appellate Court finds the cause sufficient for condonation of delay, the appellate Court must record its reasons to that effect. Therefore, it is noteworthy to observe that without condoning the delay in filing an appeal, the appellate authority lacks jurisdiction to entertain such time-barred appeal.



17. Interim stay order can be passed in a time barred appeal only in extreme circumstances of a given case where the order in appeal has serious consequences, hence, under such exceptional circumstances, a stay on the time-barred appeal is appropriate. It has been held by the Hon'ble Apex Court in the case of **Mool Chand Yadav And Anr. vs Raza Buland Sugar Company Limited**, reported in **1982(3) SCC 484** and this Court in main case of **Dilip Bhai Gajrota** (Supra) but in the instant case, no such special and exceptional circumstances were present before the RAA to pass interim stay order in a three years time barred appeal without condoning the delay.

18. The Hon'ble Apex Court in the case of **Gagandeep** (Supra) has dealt with the identical issue and has categorically held that interim stay order should not be passed until and unless the delay in filing the appeal is condoned. The appeal remains defective unless the delay in filing the same stands condoned. In the instant case also without condoning the delay, the interim stay order dated 10.06.2026 was passed by the RAA.

19. Perusal of the impugned order dated 10.06.2026 indicates that no special circumstances were mentioned by the RAA for passing the interim stay order without condoning the delay and without hearing the other side. Hence, on this count alone, the impugned order dated 10.06.2026 passed by the RAA is found to be not sustainable in the eyes of law and the same is liable to be and is hereby quashed and set aside, accordingly, the consequential impugned order dated 04.08.2026 passed by the Board also stands quashed and set aside.



20. Consequences to follow.

21. The RAA is directed to hear the arguments of both the sides on the application submitted by the defendant under Section 5 of the Limitation Act and then decide the matter in accordance with law.

22. The parties are directed to appear before the RAA on 22.09.2026.

23. Needless to observe that all endeavours would be made by the RAA to decide the application submitted under Section 5 of the limitation Act expeditiously, as early as possible, without entertaining any unnecessary requests for adjournment made by either side.

24. Before parting with the order, it is made clear that the RAA would decide the application on its merit without being influenced by any of the observations, if made herein by this Court.

25. Accordingly, the present writ petition stands disposed of. Stay application and all pending application(s), if any, also stand disposed of.

(ANOOP KUMAR DHAND),J

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