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CR-514-2025

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VINAY SARAF

ON THE 8th OF OCTOBER, 2026CIVIL REVISION No. 514 of 2025

CNR No.: MPHC020171742025

*DEEPAK AFLE**Versus*

*DHARAM DEVELOPERS AND FINVEST LIMITED THROUGH ITS
AUTHORIZED DIRECTOR SURENDRASINGH AND OTHERS*

.....
Appearance:

Shri Anuj Bhargava - Advocate for the petitioner.

*Shri A.K. Sethi - Senior Advocate along with Harish Joshi - Advocate for
the respondent No.1.*

Ms. Youkta Pahadiya - Panel Lawyer for the respondent No.2 / State.
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Reserved on : 05.10.2026

Delivered on : 08.10.2026
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ORDER

This civil revision is preferred by the original defendant impugning order dated 28.02.2025 passed in MCA No. 129/2024, by Thirteenth District Judge, Indore (M.P.), whereby the miscellaneous appeal preferred by the petitioner under Order XLIII Rule 1(d) of Code of Civil Procedure, 1908 (hereinafter referred to as "CPC"), was dismissed and the order passed by the Fifth Civil Judge, Senior Division, Indore in MJC No. 834/2022 on 13.04.2024 was upheld.

2. The short facts of the case are that the respondent No. 1 Dharam



Developers & Finvest Ltd. (hereinafter referred to as "plaintiff") filed a suit for specific performance of the contract and perpetual injunction on 04.04.2017 in the Court of Seventeenth Civil Judge, Class-I, Indore registered as RCSA No. 380-A/2017 against the petitioner (hereinafter referred to as "defendant") and the State of M.P. in respect of suit land bearing survey No. 573/17 admeasuring 0.169 hectare of village Machal, Tehsil Depalpur, District Indore on the ground that the defendant has purchased the land through registered sale deed dated 10.07.2006 from one Bhagirath S/o Champalal and entered into an agreement to sale the land to the plaintiff company on 24.04.2012 in the presence of witnesses Sunil and Pavit. Part sale consideration of Rs. 10,00,000/- were paid to the defendant through cheques at the time of execution of agreement and balance amount was payable till 31.03.2013 at the time of execution of sale deed by the defendant in favour of plaintiff.

3. It is further stated in the plaint that as the defendant failed to execute the sale deed in favour of the plaintiff, the plaintiff, after issuance of notice, filed a suit for specific performance of the contract on 30.03.2017. The notice of the suit was issued to the defendant and returned unserved, therefore, an application under Order V Rule 20 of CPC was filed by the plaintiff, which was allowed by order dated 06.07.2017 and the notice of the defendant was published in daily newspaper "Nai Dunia". As the defendant remained absent even after publication of notice, the trial Court proceeded *ex parte* against the defendant on 24.08.2017 and *ex parte* judgment and decree have been passed on 08.08.2019 by Fifth Civil Judge, Class-I, Indore,



whereby the suit filed by the plaintiff was allowed and the decree of specific performance of the contract and perpetual injunction have been passed against the defendant.

4. The plaintiff filed the execution petition for execution of the decree and a notice has been issued to the defendant in execution petition and when the defendant appeared in the execution, for the first time, he came to know that *ex parte* judgment and decree has been passed against him. Therefore, he moved an application under Order IX Rule 13 of CPC for setting aside the *ex parte* judgment and decree on the ground that no notice of suit was legally served upon the defendant and he came to know for the first time, when he received the notice of execution on 20.11.2019 and he immediately contracted to his Lawyer and upon enquiry came to know that *ex parte* judgment and decree has been passed against him. However, due to lockdown, he could not take action immediately and when he approached to the Lawyer in the month of July, 2022, it was informed to him that his Lawyer has permanently shifted to Kerela. His Lawyer did not advise him to file any application for setting aside the *ex parte* judgment and decree at that time in the month of November, 2019.

5. When he approached another Lawyer, he came to know that the *ex parte* judgment and decree is required to be challenged in an application under Order IX Rule 13 of CPC, therefore, he moved an application under Order IX Rule 13 of CPC on 17.11.2022, which was registered as MJC No. 834/2022. Alongwith the MJC, an application under Section 5 of Limitation Act was also filed by the defendant for condoning the delay occurred in



filing the application under Order IX Rule 13 of CPC.

6. The plaintiff appeared in MJC and filed the reply and submits that the defendant was having knowledge of the suit and he was avoiding the service of notice, therefore, the notice was published in daily newspaper "Nai Dunia" having wide circulation in the city of Indore and as the plaintiff remained absent even after publication of the notice, the Court proceeded *ex parte* against him and later on filed the *ex parte* judgment and decree against him on 08.08.2019. He further submits that even as per the defendant himself, he received the knowledge of *ex parte* judgment and decree in execution proceeding.

7. The defendant appeared in the execution case on 27.11.2019 through Lawyer. Meaning thereby, he was having knowledge of the *ex parte* judgment and decree on or before 27.11.2019. However, he moved the application after a period of 3 years 3 months and no cogent reason has been assigned by the defendant for not taking any action immediately after gathering the information of *ex parte* judgment and decree. The application filed by the defendant under Section 5 of the Limitation Act was also opposed by the plaintiff by filing the separate reply. The plaintiff stated that the reason assigned in the application for not filing the MJC petition within 30 days from the date of knowledge of the *ex parte* judgment and decree is neither *bonafide* nor acceptable and the defendant has failed to submit any sufficient cause for filing the application with an extraordinary delay of 3 years 3 months.

8. The trial Court, by order dated 13.04.2024, decided the application



filed under Section 5 of the Limitation Act by the applicant for condonation of delay of 1093 days and dismissed the same on the ground that the defendant is not entitled for any relief as his conduct was grossly negligent or lack of *bonafide*. The trial Court, relying upon the judgment delivered by the Supreme Court in the matter of *Lanka Venkateswarlu (D) By Lrs. vs State of A.P. & Ors, AIR 2011 SC 1199* , held that the reason assigned by the defendant is not *bonafide*, sufficient and appropriate and, therefore, the delay cannot be condoned. Consequently, the application filed under Section 5 of the Limitation Act and consequently, the application filed under Order IX Rule 13 of CPC was also dismissed.

9. Thereafter, the defendant challenged the order in miscellaneous appeal MCA No. 129/2024 in the Court of Thirteenth District Judge, Indore, which was dismissed by order dated 28.02.2025 and the Appellate Court upheld the order passed by the trial Court. Hence, this civil revision is preferred by the defendant for setting aside the impugned orders dated 13.04.2024 and 28.02.2025.

10. With the consent of the parties, the arguments heard for the purpose of the final disposal of the appeal.

11. Shri Anuj Bhargava, learned counsel appearing on behalf of the petitioner submits that the trial Court and the Appellate Court failed to consider that the reason assigned by the petitioner for not filing the application under Order IX Rule 13 of CPC within the prescribed period of limitation is a sufficient reason and due to sufficient cause, the petitioner was prevented from filing the same within limitation.



12. The petitioner was completely dependent upon his Lawyer, who never advised him to file the application under Order IX Rule 13 of CPC and simply appeared in the execution. When the Lawyer shifted to Kerala in July 2022, the petitioner approached to the another Lawyer, who advised him to file application for setting aside the *ex parte* judgment and decree and, thereafter, the application was filed. He submits that the mistake was bonafide and based upon the legal advise provided by the Lawyer. He further submits that the trial Court and Appellate Court have committed error in holding that the petitioner has not filed any document to explain the cause of delay. He prays for allowing the appeal.

13. Shri Ashok Kumar Sethi, learned senior counsel appearing on behalf of the respondent No. 1 / plaintiff opposed the appeal and submits that the reason assigned by the petitioner for condonation of delay of 1093 days was not sufficient and, thus, the trial Court has not committed any error in dismissing the application filed under Section 5 of the Limitation Act and consequently, the application filed under Order IX Rule 13 of CPC. He further submits that the finding of facts cannot be challenged in a civil revision and the Court should not re-appreciate the finding of facts for reaching to a different conclusion. He relied upon the judgment delivered by the Supreme Court in the matter of *Lanka Venkateswarlu (D) By Lrs. (supra)*, wherein it has been held that if the delay has not been explained properly and the conduct of the applicant is grossly negligent and there are lack of *bonafide*, the delay cannot be condoned. He submits that the order passed by the trial Court on 13.04.2024 and the Appellate Court on



28.02.2025 are just and proper and appeal be dismissed.

14. After consideration of the arguments and perusal of the record, it reveals that the plaintiff filed a suit for specific performance of the contract. The defendant proceeded *ex parte* on the basis of the publication of notice in daily newspaper "Nai Dunia" and subsequently *ex parte* judgment and decree of specific performance of the contract has been passed against the defendant. As per the defendant, he received the notice of execution for the date fixed in the execution on 27.11.2019 and thereafter, he approached to a Lawyer, who never suggested him to file any petition for setting aside the *ex parte* decree, thus, the application was not filed prior. In the month of July 2022, he came to know that the Lawyer has shifted to Kerala and thereafter, he contacted to another Lawyer, who suggested to file the application under Order IX Rule 13 of CPC and, therefore, the same was filed with a delay of 1093 days. An application under Section 5 of Limitation Act was also filed, which was dismissed by the impugned order dated 13.04.2024 and the miscellaneous appeal is also dismissed by impugned order dated 28.02.2025.

15. The sole question which arises in this case is that the reason assigned by the defendant for condonation of delay was sufficient or not ?

16. Section 5 of Limitation Act application is always required to be decided considering the existence of sufficient cause for condonation of delay. It is submitted on behalf of the defendant that when he received the notice of execution, he engaged a Lawyer, who appeared in the execution on 27.11.2019 itself. The defendant is not having any knowledge of legal



provisions, he states that he was not advised by the earlier lawyer to file any application under Order IX Rule 13 of CPC and he relied upon the Lawyer and when the said Lawyer shifted to Kerala in July 2022, he engaged another Lawyer, who advised him to file an application under Order IX Rule 13 of CPC for setting aside the *ex parte* judgment and decree.

17. The reason assigned by the defendant is supported by the fact that the Lawyer engaged by the defendant was appeared in the execution on 27.11.2019 and later on, the defendant has engaged a new Lawyer, who filed the application for setting aside the *ex parte* judgment and decree. A litigant is always dependent upon the Lawyer and act as per the advise of the Lawyer. The reason assigned in the application filed under Section 5 of the Limitation Act is based on the mistake of Lawyer. It is settled position of law that a litigant should not suffer for any mistake committed by the Lawyer. The condonation of delay is a matter of discretion of the Court and Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criteria. Even a delay of short period may not be condoned due to want of acceptable explanation, whereas very long delay may be condoned as the explanation submitted thereof is satisfactory. The decision ought to have been taken on the basis of the explanation offered by the litigant, who is seeking condonation of delay.

18. The defendant was completely dependent upon the Lawyer and as he did not suggest for filing the application under Order IX Rule 13 of CPC, the same was not filed and consequently, the delay occurred in filing the



application. If the delay is not condoned and the application under Order IX Rule 13 of CPC is not considered, the defendant will suffer drastic consequences. The *ex parte* decree of specific performance has been passed against the defendant and the application filed for setting aside the *ex parte* judgment and decree has been dismissed as a consequence of dismissal of application filed under Section 5 of Limitation Act.

19. Normally, the superior Court do not disturb the findings recorded by the trial Court and Appellate Court in respect of the explanation offered by the litigant for condonation of delay and much less in revisional jurisdiction unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. However, if the delay is not condoned and the trial Court and Appellate Court refused to condone the delay, in such circumstances, the superior Court in revisional jurisdiction would be free to consider the cause shown for delay afresh and it is open to such superior Court to come to its own findings. The rules of limitation are not meant to destroy the right of the parties and they are meant to seek that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damages caused by reason of legal injury as held by the Supreme Court in the matter of *N. Balakrishnan v. M. Krishnamurthy, 1998 (7) SCC 123*, and in view of the law laid down by the Supreme Court, this Court is re-examining the cause put up by the defendant for condonation of delay.

20. In view of this Court, if a litigant is fully dependent upon a Lawyer and a Lawyer has committed mistake by not suggesting to the litigant to file



any application for setting aside the *ex parte* judgment and decree, the defendant should not suffer for that. At least the application filed under Order IX Rule 13 of CPC should be considered and decided on merits. In this case, the application under Section 5 of the Limitation Act is dismissed and consequently, the application under Order IX Rule 13 of CPC is also dismissed. The defendant is now remediless in respect of the *ex parte* judgment and decree of specific performance of contract. At the same time, it is also considerable that in the original suit, the notice was served through publication. During this period of 3 years 3 months in respect of which the defendant is seeking condonation of delay, there was Covid period and Supreme Court by passing the directions time to time in the case of *Suo Moto Writ Petition (Civil) No. 3/2020 In Re: Cognizance for Extension of Limitation* exempted the period from 15.03.2020 to 28.03.2022 from computation of the limitation for filing any case.

21. Considering the totality of the case, in view of this Court, the delay occurred in approaching the Court by filing the application under Order IX Rule 13 of CPC ought to have been condoned and the trial Court has decided the application filed under Section 5 of the Limitation Act in a highly technical manner. The First Appellate Court has also not considered that it would cause an irreparable loss to the defendant. The delay caused by the defendant in approaching to the Court may be condoned by compensating the opposite party for his loss.

22. In view of the above, in the considered opinion of this Court the application under Section 5 of the Limitation Act ought to have been



allowed. Consequently, the order dated 13.04.2024 passed by Fifth Civil Judge, Senior Division, Indore in MJC No. 834/2022 and affirmed by Thirteenth District Judge, Indore vide order dated 28.02.2025 passed in MCA No. 129/2024 are hereby set aside and the application filed under Section 5 of the Limitation Act in MJC is allowed. The delay occurred in filing the application under Order IX Rule 13 of CPC is hereby condoned subject to payment of a cost of Rs. 50,000/- (Rupees Fifty Thousand Only) to the plaintiff by the defendant.

23. The Civil Revision Petition is **partly allowed**. Delay is condoned. Matter is remanded back to the Trial Court. MJC is restored to its original number for consideration of the application filed under Order IX Rule 13 of CPC in accordance with the law. The trial Court will consider and decide the application under Order IX Rule 13 of CPC in accordance with law without being influenced by anything stated hereinabove.

24. Record of the trial Court and Appellate Court be returned along with the copy of this order.

(VINAY SARAF)
JUDGE

Divyansh