

GJBH010031082022



Filing No.: CMA/93/2022

Filed On: 19/10/2022

Decided On : 16/06/2026

Duration: 3Y-7M-28D

**In the Court of Principal District Judge,
At. Bharuch.**

Civil Misc. Application (Condonation of Delay)No.93/2022

Exh._____

Applicant: Madhusudan Bhavanishankar
R/o. At. Piluda, Tal. Jambusar,
Dist. Bharuch.

V/s.

Opponents: 1. Heirs of Late Jethabhai Rayjibhai
1/1 Dahiben Jethabhai
1/2 Mahaliben Jethabhai
1/3 Khumansinh Jethabhai
1/4 Chandubhai Jethabhai (*Deleted vide order below Exh. 7*)
All are R/o. At. Piluda,
Tal. Jambusar, Dist. Bharuch.

Appearance:

Ld. Advocate Mr. S. I. Dola, for the applicant.

Opponent Nos.1/1 & 1/2 Ex-parte.

Ld. Advocate Mr. R. I. Afinwala, for the opponent No.1/3.

An application U/s. 5 of The Indian Limitation Act, 1963.

JUDGMENT

1. The applicant has preferred the present application u/s.5 of the Limitation Act, 1963, praying for condonation of delay of one and half month (45 days) occurred in preferring the regular civil appeal.

2. Learned Advocate for the applicant has submitted that, the applicant intend to challenge the judgment and decree dated 30.07.2022 passed by learned Additional Civil Judge, Jambusar in Regular Civil Suit No.251/1981. He has further submitted that, the trial court pronounced the judgment on 30.07.2022 and decree was drawn on 24.08.2022. He has further submitted that, as the applicant is aged and infirm person and because of his ill-health, he was unable to prefer the appeal within prescribed period of limitation, resulting in a delay of 45 days has occurred in preferring the appeal. Thus, there is no willful delay on the part of the applicant and if the delay is condoned, no prejudice would be caused to the other side. Hence, he has submitted that, to do substantial justice present application may be allowed.
3. Despite due service of notices, opponent Nos.1/1 & 1/2 have not remained present before the court. Therefore, order dated 08.04.2025 was passed to proceed against them ex-parte.
4. Upon due service of notice, the opponent No.1/3 has appeared through his advocate and filed reply at **Exh.6**. It is contended that the applicant has not mentioned any proper and bonafide reasons for condonation of delay. It is further stated that, the applicant was well aware of the procedural law and the prescribed period of limitation. Despite such knowledge, he failed to file the appeal within

the stipulated period, which clearly amounts to inaction and negligence on his part. It is also stated that, sufficient cause has not been shown by the applicant, hence unexplained delay even a day may not be condoned. Thus, this application may be dismissed with costs.

5. Heard learned advocates for the parties and perused the application. From the material on records, it appears that applicant is aged and infirm person. The applicant was unable to prefer the appeal within prescribed period of limitation because of his ill-health. Therefore, the reasons stated by the applicant causing the delay do not appear to be willful negligence or malafide. Sufficient cause has been shown by the applicant to condone the delay. The legislature has conferred power to condone the delay by enacting Section 5 of the Limitation Act, 1963, in order to enable the Courts to do substantial justice to parties by disposing of matters on “merits”. The expression “sufficient cause” employed by the legislature is adequately elastic to enable the Court to apply the law in a meaningful manner which sub-serves the ends of justice that being the life-purpose for the existence of the institution of Courts.
6. It is fruitful to refer the decision of the Hon’ble Apex Court in the case of **Collector, Land Acquisition, Anantnag v. Katiji** reported in **1987 (2) SCC 107**. In the said decision, the Hon’ble Apex Court has held in **para-3**

as under:-

3. *"The legislature has conferred the power to condone delay by enacting Section 5 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on 'merits'. The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:-*
 1. *Ordinarily a litigant does not stand to benefit by lodging an appeal late.*
 2. *Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.*
 3. *"Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.*
 4. *When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.*
 5. *There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.*
 6. *It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."*

7. Therefore, in view of the settled legal position of law, when substantial justice and technical consideration are pitted against each other, cause of substantial justice deserves to be preferred. Hence, considering the fact that sufficient cause being shown by the applicant, the present application is required to be allowed. Hence, the following final order is passed :-

ORDER

1. This application is hereby allowed.
2. The delay of one and half month (45 days) caused in preferring regular civil appeal against the judgment and decree dated 30.07.2022 passed by learned Additional Civil Judge, Jambusar, in Regular Civil Suit No.251/1981 is hereby condoned.
3. The Registry is directed to register the regular civil appeal.

Pronounced in the open Court today on 16th June, 2026.

Date: 16/06/2026

(Rajesh Karmarsinh Desai)
Principal District Judge
Bharuch
Code No.GJ00912