

ORDER BELOW EX.-1 IN C.M.A. NO. 58 OF 2025.

1. The applicants have proposed to file a Regular Civil Appeal against the impugned judgment delivered by Ld. 2nd Additional Civil Judge, Jhalod, in Regular Civil Suit No. 93/2005. The applicants have preferred an application Under Sec. 5 of Limitation Act, for condonation of delay of 339 days.
2. Read the application. Heard Ld. Advocate Mr. R. S. Agrawal for the applicant and Ld. Advocate Mr. D. M. Dasani for the opponent.
3. According to submission made by applicants that Ld. Trial Court has delivered the Judgment on 25.10.2024, thereafter Ld. Advocate for the applicants has applied for the certified copies on 04.11.2024 and applicants have received certified copies on 18.11.2024, but according to their Ld. Advocate, important documents along with certified copy of decree were not included in the certified copies received by the applicants. Thereafter, the applicants have again applied for certified copies on 25.11.2024 and they have received the same on 26.11.2024 and handed over to Ld. Advocate on their behalf, meanwhile Ld. Advocate was suffering from ill-health and he died on 08.09.2025 and therefore they could not file Appeal within stipulated period and delay of 339 days occurred in filing appeal. Such delay is not a deliberate inaction on their part and therefore, requested the Court to condone the delay. Per contra, opponents have been served with the notices and opponent appeared through Ld.

Advocate, and filed written statement vide Exh.6 and contended that there is no sufficient cause for the huge delay of 339 days and therefore present application requires to be rejected with costs.

4. Before dealing with the “**Sufficient Cause**”, it is pertinent to note that in **Pushpaben Balwantraai v. Nandkumar Ramanlal, 2004(4) GLR 3015**, Hon'ble High Court has observed that -

condonation of delay, the Court should see whether there is any sufficient ground for condoning the delay, the Court not required to take into consideration merits of the case, cannot be decided unless delay is condoned and the matter is taken for hearing after condonation of delay. At such stage, the Court is not expected to take into consideration the merits of the main issues. The main issues cannot be decided unless delay is condoned by the Court and the matter is taken up for hearing on its own merits.

5. The applicants have proposed to file Appeal. Looking to above mentioned fact by the applicants, the delay has been occurred due to the reasons mentioned in the application, which is primarily beyond control of the applicants. It clearly appears that, delay was caused due to ill-health of Ld. Advocate for the applicants and thereafter demise of their Ld. Advocate. Further, the Court should not be too

technical, while dealing with the delay application, where sufficient cause seems plausible. Thus, it was not willful and inaction on the part of applicants. Therefore, the applicants have shown sufficient cause. Hence, following order is passed.

ORDER

1. This application is hereby allowed.
2. Delay of 339 days in filing Regular Civil Appeal is hereby condoned subject to pay the cost of Rs.10,000/- (Rupees Ten Thousand Only) to the Respondent No. 1 within 14 days of this order.
3. On confirmation of payment to Respondent No.1, Registry is directed to register the Civil Appeal in proper Register.

Signed and Pronounced in the Open Court, today on 07th March, 2026.

Date:07.03.2026
Place: Dahod.

(Sandipsinh G. Dodiya)
UIC No:GJ00902
3rd Additional District Judge,
Dahod.