

Received on 10.06.2019
Registered on 10.06.2019
Decided on 09.03.2026
Duration Y. 06 M. 08 D. 30

**IN THE COURT OF PRINCIPAL DISTRICT JUDGE
GANDHINAGAR**

CIVIL MISCELLANEOUS APPLICATION NO. 120 OF 2019

Exh. 13

Applicants :-

- (1) Legal heirs of deceased Patel Ambalal Madhavlal
(1/1) Kashben widow of Ambalal Patel
Age : 72 years,
(1/2) Patel Jashiben Ambalal
Age : 40 years,
(1/3) Patel Rajeshbhai Ambalal
Age : 42 years,
(1/4) Patel Madhuben Ambalal
Age : 37 years,
(1/5) Patel Manjulaben Ambalal
Age : 32 years,
- (2) Legal heirs of deceased Patel Ramanlal Mohanlal
(2/1) Divaliben widow of Ramanbhai Patel
Age : 72 years,
(2/2) Patel Atulkumar Ramanbhai
Age : 48 years,
(2/3) Patel Ashokkumar Ramanbhai
Age : 45 years,
(2/4) Patel Mukeshkumar Ramanbhai
Age : 53 years,
(2/5) Patel Minaben Ramanbhai
Age : 46 years,

Principal District Judge
Gandhinagar

All are residing at : Sajjanpura, Near Panjara pole,
Opp. Rabari vas, At & Taluka : Mansa, District : Gandhinagar.

V e r s u s

Opponents :-

- (1) Gadhavi Ratanbhai Devidan himself and
administrator of HUF
Gadhavi Devidan Ishwardas
Age : 60 years, Occupation : Service/Agriculture,
Address : Mansa,
At present residing at : Ahmedabad.
- (2) Gadhavi Laxmanbhai Umeddas himself and
administrator of HUF
legal heirs of deceased Gadhavi Umedbhai Prabhudas
- (2/1) Daluben widow of Laxmanbhai Gadhavi
Age : 80 years, Occupation : Household,
Residing at : 9, Smruti Darshan Society Row Housing,
Benind Smruti Mandir, Ghodasar, Ahmedabad.
- (2/2) Jashubhai Laxmanbhai Gadhvi
Age : 66 years, Occupation : Service,
Residing at : 1/1, Sudama Apartment,
Vastrapur road, Rabari Colony, Amraivadi.
Ahmedabad.
- (2/3) Poonamben Laxmanbhai Gadhavi
Age : 61 years, Occupation : Household,
- (2/4) Dipakkumar Laxmanbhai Gadhavi
Age : 57 years, Occupation : Service,
No.2/3 and 2/4 are residing at : Khanpur,
Jaliya no madh, At & Taluka : Dehgam,
District : Gandhinagar.
- (2/5) Dineshbhai Laxmanbhai Gadhavi
Age : 50 years, Occupation : Service,
Residing at : 9, Smruti Darshan Society Row Housing,
Behind Smruti Mandir, Ghodasar, Ahmedabad.
- (3) Legal heirs of deceased Yashvantbhai Girdharbhai Shah

Principal District Judge
Gandhinagar

- (3/1) Pankajkumar Yashvantbhai Shah
Age : Adult,
(3/2) Anupbhai Yashvantbhai Shah
Age : Adult,
(3/3) Shantaben Yashvantbhai Shah
Age : Adult,
(3/4) Ashaben Yashvantbhai Shah
Age : Adult,
(3/5) Harshadbhai Yashvantbhai Shah
Age : Adult,
No.3/1 to 3/5 are residing at :
Near Bahuchar Mata temple,
At & Taluka : Mansa, District : Gandhinagar.
At present residing at : 18, Kumbhar Tukada,
Bhagat House, Mumbai-4.

Appearance:-

Learned advocate Mr. M.R.Bhatt for the applicants

Learned advocate Mr. U.P.Joshi for the opponent No.2/4

Public notice published against opponent No.1, 2/1 to 2/3, 2/5
and 3/1 to 3/5

:- JUDGMENT :-

- [1] The applicants have preferred the present application for condonation of delay of 161 days in filing appeal against the order dated 29.11.2018 passed by learned Principal Civil Judge, Mansa, in Regular Civil Suit No.24 of 1993.
- [2] It is contended by the applicants that delay has occurred due to bonafide and unavoidable circumstances and not due to any deliberate negligence or intentional lapse on the part of the applicants.

Principal District Judge
Gandhinagar

Applicants are farmer, ignorant of law, they were told by their advocate to come in the Court while they were called, so, applicants have not remained present before the Court during proceeding of the matter and they just came to know about pronouncement of judgment at the time when they received caveat. It is further submitted that ancestor of applicants was party in the suit and he was dealing with the matter and after his demise, applicants were joined as parties being heirs. Thereafter, applicants had shown papers to their advocate, at that time, learned advocate told them that appeal is pending before the Hon'ble High Court, therefore, suit cannot be proceeded further until disposal of said appeal. Thereafter, applicants have received caveat and they came to know about Judgment and Decree passed in said Suit, so, applicants have asked their advocate to obtain certified copy of the same. Learned advocate for the applicants received certified copy of the said Judgment on 15.03.2019, at that time, applicants came to know that matter was disposed of on 29.11.2018 and their advocate had made endorsement as "seen" on 23.01.2019. Copy of Judgment was shown to another advocate and he told to applicants to provide name and address of parties and in collecting such information, some time passed. Thus, the delay is not intentional and therefore, the applicants have prayed

for condonation of delay. Learned advocate for the applicants has relied on judgment reported at 6 GLR page No.837 and judgment of Revision Application No.T.E.N.B.A. 483/1994, dated 29.12.1995 passed by the Hon'ble Gujarat Revenue Tribunal.

- [3] Notice was issued to the other side. Opponent No.2/4 has appeared through advocate Mr.U.P.Jani. Public notice was published against opponent No.1, 2/1 to 2/3, 2/5 and 3/1 to 3/5 but they have not appeared before the Court. Learned advocate for the opponent No.2/4 has objected the application and contended that the applicants have not given any satisfactory reason for condonation of delay and therefore, the application is required to be rejected.
- [4] Read the application and heard learned advocates appearing for the parties and also considered the background facts of the application, which prevented the applicants for filing the appeal within statutory period.
- [5] Looking to the application Exh.1, at the end of application, date of filing application is mentioned as 31.03.2019 but on that day, application was not filed and thereafter, on 10.06.2019, application was presented, such delay is unexplained. Further,

applicants themselves have mentioned in the application at Exh.1 that ancestor of applicants died during the proceedings of the matter, so, they were joined as parties to the suit in the year-2017, at that time, it was disclosed by them before their advocate that one another matter is pending before the Hon'ble High Court. It means applicants have knowledge about the litigation is pending in Hon'ble High Court also. It seems from the record that the applicants have not cited any sufficient cause for such delay of about 161 days. In case of delay, generally the court takes liberal view, but sufficient cause must be shown by the applicant for condoning the delay. Present application for condonation of delay has been filed under Section 5 of the Limitation Act, 1963. Section-5 says that:

“Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.”

- [6] It would be fruitful to refer the judgment of Hon'ble Supreme Court in the case of *Majji Sannemma @ Sanyasirao v/s. Reddy Sridevi & Ors.* Reported in 2022 SAR (Civ) 199, wherein there was delay of 1011 days,

which was condoned by High Court and appeal was filed against the same. Hon'ble Apex Court allowed the appeal, observing that there was no sufficient or satisfactory explanation by the parties before High Court for condonation of huge delay of 1011 days. Relevant paragraphs of the said judgment are reproduced as under:

“6.2 We have gone through the averments in the application for the condonation of delay. There is no sufficient explanation for the period from 15.03.2017 till the Second Appeal was preferred in the year 2021. In the application seeking condonation of delay it was stated that she is aged 45 years and was looking after the entire litigation and that she was suffering from health issues and she had fallen sick from 01.01.2017 to 15.03.2017 and she was advised to take bed rest for the said period. However, there is no explanation for the period after 15.03.2017. Thus, the period of delay from 15.03.2017 till the Second Appeal was filed in the year 2021 has not at all been explained. Therefore, the High Court has not exercised the discretion judiciously.

7.2 In the case of P.K. Ramachandran (supra), while refusing to condone the delay of 565 days, it is observed that in the absence of reasonable, satisfactory or even appropriate explanation for seeking condonation of delay, the same is not to be

condoned lightly. It is further observed that the law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the courts have no power to extend the period of limitation on equitable grounds. It is further observed that while exercising discretion for condoning the delay, the court has to exercise discretion judiciously.”

- [7] On going through the present delay condonation application, delay of 161 days caused in filing appeal against the impugned order. Looking to the reasons, it transpires that the applicants were negligent in proceed further with filing of appeal. The applicant side had to show sufficient cause for the delay but in the present case, the applicants have only given cause for delay upto 31.03.2019. The present application was filed on 10.06.2019, no cause, leave alone, sufficient cause has been shown by the applicants for the delay between 31.03.2019 and 10.06.2019. Being lenient means that Court will not be too technical while commenting upon the sufficient cause but when no cause has been shown, there can be no cause of any leniency in condoning the delay. There is not even an iota about the delay between 31.03.2019 and 10.06.2019 in the application for condonation of delay. Therefore, considering the conduct of the applicants

herein, which demonstrates that they had voluntarily abandoned the proceedings of the case. The conduct and attitude of the applicants herein seems to be deliberate inaction and there was a lack of *bona fides* in pursuing the proceedings of the case. The applicants have to show sufficient cause for the entire period in which the applicants has miserably failed. Therefore, the reasons pleaded by the applicants herein cannot be said to be 'sufficient cause'.

[8] Thus, in the present case, the delay has not been explained by the applicants and therefore, the delay cannot be condoned casually. Therefore, ratio laid down in the case of *Majji Sannemma @ Sanyasirao (supra)* would be applicable in the present case.

[9] In view of the aforesaid facts and reasons mentioned herein-above, I am of the view that the applicants themselves were negligent, have caused the delay, and were not diligent in pursuing the remedy. The reasons stated by the applicants are not satisfactory and convincing to condone the delay. Therefore, the application has no any merits and it deserves to be dismissed and accordingly, I pass the following final order:

ORDER

- (a) Present application stands rejected.

(b) No order as to costs.

Order signed and pronounced in open court today, on this 9th day of March, 2026.

Date:- 09/03/2026
Place:- Gandhinagar.

[Ashish J.S.Malhotra]
GJ01504
Principal District Judge
Gandhinagar

/pbshah/



Principal District Judge
Gandhinagar