

GJGS010005522025



Received on : 19.05.2025
Registered on : 19.05.2025
Decided on : 07.04.2026
Duration : YY MM DD
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**IN THE COURT OF PRINCIPAL DISTRICT JUDGE,
GIR-SOMNATH AT VERAVAL.**

C.M.A. DC No. 54 / 2025

Exh.

Applicants (Original Plaintiffs) :-

- 1 Hajabhai Jivabhai Bambhaniya,
Age: 64 years, Occupation: Agriculture,
R/o. Prashnavada, Gayavav, Bapunagar,
Taluka Sutrapada, District Gir Somnath.
2. Heirs of deceased Bhanjibhai Jivabhai Bambhaniya;
- 2/1 Jiviben W/o Bhanjibhai Bambhaniya,
Age: 64 years, Occupation: Agri.-Household,
R/o. Prashnavada,
Taluka Sutrapada, District Gir Somnath.
- 2/2 Alkeshbhai Bhanjibhai Bambhaniya,
Age: 49 years, Occupation: Agriculture,
R/o. Prashnavada,
Taluka Sutrapada, District Gir Somnath.
- 2/3 Hansaben D/o. Bhanjibhai Bambhaniya,
Age: 47 years, Occupation: Agri.-Household,
R/o. Mitiyaj,
Taluka Kodinar, District Gir Somnath.
- 2/4 Kishorbhai Bhanjibhai Bambhaniya,
Age: 34 years, Occupation: Agriculture,
R/o. Prashnavada,
Taluka Sutrapada, District Gir Somnath.
- 2/5 Pritiben D/o Bhanjibhai Bambhaniya,
Age: 49 years, Occupation: Agri.-Household,
R/o. Dhamlej, Navapara,
Taluka Sutrapada, District Gir Somnath.

3. Heirs of deceased Vijanandbhai Jivabhai Bambhaniya
- 3/1 Meiben W/o Vijanandbhai Bambhaniya,
Age: 64 years, Occupation: Agri.-Household,
R/o. Prashnavada,
Taluka Sutrapada, District Gir Somnath.
- 3/2 Kanjibhai Vijanandbhai Bambhaniya,
Age: 44 years, Occupation: Agriculture,
R/o. Prashnavada,
Taluka Sutrapada, District Gir Somnath.
- 3/3 Pratapbhai Vijanandbhai Bambhaniya,
Age: 43 years, Occupation: Agriculture,
R/o. Prashnavada,
Taluka Sutrapada, District Gir Somnath.
- 3/4 Bhavanaben D/o. Vijanandbhai Bambhaniya,
Age: 36 years, Occupation: Agri.-Household,
R/o. Dhamlej, Patel Sheri,
Taluka Sutrapada, District Gir Somnath.
- 3/5 Miteshbhai @ Nitesh Vijanandbhai Bambhaniya,
Age: 32 years, Occupation: Agriculture,
R/o. Prashnavada,
Taluka Sutrapada, District Gir Somnath.
- 3/6 Bhaveshbhai @ Bhavsinh Vijanandbhai Bambhaniya,
Age: 29 years, Occupation: Agriculture,
R/o. Prashnavada,
Taluka Sutrapada, District Gir Somnath.
4. Heirs of deceased Bhupatbhai Jivabhai Bambhaniya;
- 4/1 Lakhiben W/o. Bhupatbhai Bambhaniya,
Age: 54 years, Occupation: Agri.-Household,
R/o. Prashnavada,
Taluka Sutrapada, District Gir Somnath.
- 4/2 Anjuben @ Anjanaben D/o Bhupatbhai Bambhaniya,
Age: 34 years, Occupation: Agri.-Household,
R/o. Papilva, Main Road,
Taluka Sutrapada, District Gir Somnath.

- 4/3 Sangitaben D/o. Bhupatbhai Bambhaniya,
Age: 32 years, Occupation: Agri.-Household,
R/o. Sutrapada, Uplapada Area,
Taluka Sutrapada, District Gir Somnath.
- 4/4 Vijaybhai Bhupatbhai Bambhaniya,
Age: 29 years, Occupation: Agriculture,
R/o. Prashnavada, Kumbhar Sheri,
Taluka Sutrapada, District Gir Somnath.
- 4/5 Nimuben D/o Bhupatbhai Bambhaniya,
Age: 27 years, Occupation: Agri.-Household,
R/o. Sigsar,
Taluka Sutrapada, District Gir Somnath.
- 4/6 Sandipbhai Bhupatbhai Bambhaniya,
Age: 20 years, Occupation: Agriculture,
R/o. Prashnavada, Kumbhar Sheri,
Taluka Sutrapada, District Gir Somnath.

Versus

Respondents (Original Defendants) :-

- 1 Pravinbhai Jivabhai Bambhaniya,
Age: 56 years, Occupation: Agriculture,
R/o. Prashnavada,
Taluka Sutrapada, District Gir Somnath.
- 2 Bachiben D/o. Jivabhai Bambhaniya,
Age: 73 years, Occupation: Agriculture,
R/o. Prashnavada,
Taluka Sutrapada, District Gir Somnath.
- 3 Gagiben D/o. Jivabhai Bambhaniya,
Age: 74 years, Occupation: Agriculture,
R/o. Kanjotar,
Taluka Sutrapada, District Gir Somnath.

Appearance :-

Mr. J.I. Shelot, learned advocate for the applicant.
Mr. V.P. Prachhak, Ld. A.G.P. for the opponents.

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Delay Condone Application filed U/s. 5 of the Limitation Act.
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-:: J U D G M E N T ::-

- (1)** The applicant has filed the present application under ***Section 5 of the Limitation Act*** for condonation of delay in filing the Appeal against the judgment dated 14.03.2023 passed by the learned Principal Sr. Civil Judge, Veraval in ***R.C.S. No. 183 of 2019.***
- (2)** It is averred in the application that there is a delay of about 766 days in filling the accompanying appeal and it is further submitted that due to lack of knowledge, the applicants could not remain present and judgment dated 14/03/2023 came to be passed. Thereafter, probate certificate was issued and mutation entry No. 5550 came to be effected, whereby names of the applicants were deleted. The applicants came to know about the said judgment only on 02/04/2025 when they obtained revenue record. The delay of about 766 days has occurred due to lack of knowledge and is not intentional. Therefore, the applicant has prayed for condonation of delay.
- (3)** Notice were issued and duly served to the opponents, however, the Ld. Advocate for the opponent has appeared and filed the written statement at Exh.9, wherein it is contended that, though the land stood in the name of deceased Jivabhai, the alleged partition and possession are denied. Probate proceedings were legally initiated, public notice was given, and the applicants had appeared but thereafter failed to contest the matter despite sufficient opportunities and remained absent during evidence and

cross-examination. The judgment dated 14/03/2023 was therefore rightly passed, probate was granted, and mutation entry was duly effected without any challenge till date. The claim that they had no knowledge of proceedings or came to know only in April 2025 is false. The Will is valid and the applicants, being aware and represented by advocate, deliberately neglected the proceedings and remained inactive for more than two years. No sufficient or reasonable cause for such delay is shown, hence the delay is not liable to be condoned.

- (4) Learned advocate for the applicant submits that there is a delay of about 766 days in filing appeal against probate decree dated 14/03/2023. Parties are close relatives and legal heirs of deceased Jivabhai and dispute relates to ancestral agricultural land. Opponent No.1 obtained probate of alleged Will without properly joining other heirs and despite objections filed by Applicants. Though Applicants initially appeared through advocate, due to loss of contact and change of advocate, they remained unaware of further proceedings. Trial court closed their rights without proper notice and passed decree granting probate. Applicants came to know about the decree only on 02/04/2025 while checking revenue record. Delay is not intentional but due to lack of knowledge, advocate lapse and absence of proper notice, and therefore deserves to be condoned in the interest of justice. It is further submitted that the applicant has a good case on merits, therefore, a fair chance should be given to the applicant.

(5) Learned Advocate appearing for the opponents has vehemently submitted that the present application is not maintainable as the applicants have failed to show any sufficient cause for condonation of inordinate delay of 766 days. It is submitted that the applicants were very much aware about the proceedings before the trial Court as they had appeared through advocate and had also filed objections, however, thereafter they remained absent and did not take any steps to contest the matter. It is further submitted that ample opportunities were given by the trial Court but the applicants failed to avail the same and therefore, the judgment dated 14/03/2023 came to be passed on merits. However, no documents in support of the same have been produced by the applicants. Further, the Appeal is required to be filed within 30 days, however, the applicant has failed to prefer an Appeal within a prescribed period of limitation. It is further submitted that the present application deserves to be dismissed as the applicant has deliberately not mentioned all the details which are required to be considered.

(6) After hearing both the parties and upon perusal of the record, it transpires that there is a delay of about 766 days in filing the appeal. The main ground urged by the applicants for condonation of delay is that they were not aware about the proceedings before the trial Court after initial appearance and came to know about the impugned judgment only on 02/04/2025 upon obtaining the revenue record. However, it appears that the applicants had already appeared

in the proceedings through advocate and had also filed objections and therefore, it cannot be said that they were completely unaware about the proceedings. Further, no satisfactory explanation is forthcoming as to why the applicants remained inactive for such a long period even after passing of the judgment dated 14/03/2023. The reasons assigned for delay are general and not supported by any material on record. Therefore, the explanation offered by the applicants cannot be said to be sufficient cause for condonation of inordinate delay.

- (7) Legal position on the point of delay has been explained by the bench of Hon'ble Justice Mr. J.B. Pardiwala and Hon'ble Justice Mr. R. Mahadevan in case of ***State of Madhya Pradesh Vs. Ramkumar Choudhary in Special Leave Petition (C) Diary No. 48636 of 2024*** as under;

The legal position is that where a case has been presented in the Court beyond limitation, the petitioner has to explain the Court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the Court within limitation. In Majji Sannemma v. Reddy Sridevi 4 , it was held by this Court that even though limitation may harshly affect the rights of a party, it has to be applied with all its rigour when prescribed by statute. A reference was also made to the decision of this Court in Ajay Dabra v. Pyare Ram 5 wherein, it was held as follows:

"13. This Court in the case of Basawaraj v. Special Land Acquisition Officer [(2013) 14 SCC 81] while rejecting an application for condonation of delay for lack of sufficient cause has concluded in Paragraph 15 as follows:

"15. The law on the issue can be summarized to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or

for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature.”

14. Therefore, we are of the considered opinion that the High Court did not commit any mistake in dismissing the delay condonation application of the present appellant.”

Thus, it is crystal clear that the discretion to condone the delay has to be exercised judiciously based on facts and circumstances of each case and that, the expression 'sufficient cause' cannot be liberally interpreted, if negligence, inaction or lack of bona fides is attributed to the party.

5.1. In Union of India v. Jahangir Byramji Jeejeebhoy (D) through his legal heir 6 , wherein, one of us (J.B.Pardiwala, J) was a member, after referring to various decisions on the issue, it was in unequivocal terms observed by this Court that delay should not be excused as a matter of generosity and rendering substantial justice is not to cause prejudice to the opposite party. The relevant passage of the same is profitably extracted below:

“24. In the aforesaid circumstances, we made it very clear that we are not going to look into the merits of the matter as long as we are not convinced that sufficient cause has been made out for condonation of such a long and inordinate delay.

25. It hardly matters whether a litigant is a private party or a State or Union of India when it comes to condoning the gross delay of more than 12 years. If the litigant chooses to approach the court long after the lapse of the time prescribed under the relevant provisions of the law, then he cannot turn around and say that no prejudice would be caused to either side by the delay being condoned. This litigation between the parties started sometime in 1981. We are in 2024. Almost 43

years have elapsed. However, till date the respondent has not been able to reap the fruits of his decree. It would be a mockery of justice if we condone the delay of 12 years and 158 days and once again ask the respondent to undergo the rigmarole of the legal proceedings.

26. The length of the delay is a relevant matter which the court must take into consideration while considering whether the delay should be condoned or not. From the tenor of the approach of the appellants, it appears that they want to fix their own period of limitation for instituting the proceedings for which law has prescribed a period of limitation. Once it is held that a party has lost his right to have the matter considered on merits because of his own inaction for a long, it cannot be presumed to be non-deliberate delay and in such circumstances of the case, he cannot be heard to plead that the substantial justice deserves to be preferred as against the technical considerations. While considering the plea for condonation of delay, the court must not start with the merits of the main matter. 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.

27. We are of the view 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. We should not keep the 'Sword of Damocles' hanging over the head of the respondent for indefinite period of time to be determined at the whims and fancies of the appellants.

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34. In view of the aforesaid, we have reached to the conclusion that the High Court committed no error much less any error of law in passing the impugned order. Even otherwise, the High Court was exercising its supervisory jurisdiction under Article 227 of the Constitution of India.

35. In a plethora of decisions of this Court, it has been said that delay should not be excused as a matter of generosity. Rendering substantial justice is not to cause prejudice to the opposite party. The appellants have failed to prove that they were reasonably diligent in prosecuting the matter and this vital test for condoning the delay is not satisfied in this case.

36. For all the foregoing reasons, this appeal fails and is hereby dismissed. There shall be no order as to costs.”

Applying the above legal proposition to the facts of the present case, we are of the opinion that the High Court correctly refused to condone the delay and dismissed the appeal by observing that such inordinate delay was not explained satisfactorily, no sufficient cause was shown for the same, and no plausible reason was put forth by the State. Therefore, we are inclined to reject this petition at the threshold.”

- (8) In view of the factual position and the ratio laid down in the above mentioned judgments, this Court is of the view that the merits of the case cannot be looked into till the time the delay is satisfactorily explained. Delay cannot be allowed on the basis of the merits of the case. Therefore, this court is of the view that, the applicant has failed to explain the reasons of delay. Further, it is settled law that the law will not help those who sleep over their rights, "Vigilantibus non dormientibus jura subveniunt". In that view, the present application deserves to be dismissed. In that view, following order is passed :-

:: ORDER ::

- The present Civil Misc. (Delay) Application stands dismissed.
- No order as to costs.

Signed & pronounced in the open Court today on **07th April, 2026.**

Date : 07.04.2026

Place : Veraval.

(Vikramsingh B. Gohil)
Principal District Judge,
Veraval.
(Code : GJ-01042)