

GJGS030004682025



Received on : 14.07.2025

Registered on : 14.07.2025

Decided on : 08.07.2026

Duration : 11 - Months and
24 - Days.

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BEFORE THE HON'BLE 3rd ADDITIONAL DISTRICT JUDGE,
AT UNA, DISTRICT GIR-SOMNATH,

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Civil Misc. (Delay) Application No. 12 of 2025

Exh.

1. **Kashiben W/o. Bachubhai Manjibhai,**
Age:-88 years, Occupation :-Household work,
R/o. Itvaya, Ta.:-Gir-Gadhda,
District Gir-Somanth.
2. **Kantaben D/o. Bachubhai Manjibhai W/o. Jinabhai,**
Age:-70 years, Occupation :-Household work,
R/o. Bandharda, Ta.:-Gir-Gadhda,
District Gir-Somanth.
3. **Rasilaben D/o. Bachubhai Manjibhai**
W/o. Gordhanbhai Gobarbhai Khunt,
Age:-57 years, Occupation :-Household work,
R/o. Itvaya, Ta.:-Gir-Gadhda,
District Gir-Somanth.
4. **Jamnaben D/o. Bachubhai Manjibhai**
W/o. Ashwinbhai Ramani,
Age:-52 years, Occupation :-Household work,
R/o. Yogi Chowk area, Shagun Apartment,
No.204, "C" Building, Surat.
5. **Dayaben D/o. Bachubhai Manjibhai**
W/o. Hasmukhbhai Savaliya,
Age:-48 years, Occupation :-Household work,
R/o. Abhalvad, Ta.:-Kodinar,
District Gir-Somnath.

6. **Gordhanbhai Gobarbhai Khunt,**
Age:-60 years, Occupation :-Agriculture,
R/o. Itvaya, Ta.:-Gir-Gadhda,
District Gir-Somnath.Applicants
(Original Defendants No.1 to 6)

Versus

1. **Legal Heirs of Deceased Laduben D/o. Bachubhai Manji,**
Hansaben D/o. Dhanjibhai W/o. Arvindbhai Suvagiya,
Age:-45 years, Occupation :-Household/Agriculture work,
R/o. Motasamadhiyala, Ta.:-Una,
District Gir-Somanth.
2. **The Itvaya Gram Panchayat,**
Through the Revenue Talati Mantri,
At :- Itvaya, Ta.:-Gir-Gadhda,
District Gir-Somanth.
3. **The State of Gujarat,**
Through the Mamlatdar, Mamlatdar Office,
Gir-Gadhda, Ta.:-Gir-Gadhda,
District Gir-Somanth.Opponents
**(No.1 – Original Plaintiff, No.2
and 3 original defendants No.7 & 8)**

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Appearance:-

Ld. Advocate Mr. B. B. Solanki for the Applicants.
The Opponents No.1 to 3 not remained present.

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Subject :- Application for condonation of delay.

[U/s. 5 of The Limitation Act
in filing Misc. Civil Appeal under Order 43]

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:-: J U D G M E N T :-:

- (1) The applicants have preferred the present application for condonation of delay of **236 days** for filing an Appeal against the order below Exh.5 dated - **21/10/2024** passed in **Sp.C.S. No. 5 of 2022** by the **Ld. Additional Senior Civil Judge, Una** (hereinafter referred as "Ld. Trial Court").
- (2) Upon filing of the present Delay Application, notice was issued to the opponents. The notice was duly served to the opponents, but the opponents No.1 to 3 have not appeared this Court and also not filed any reports, therefore, their rights of filing reply/objections have been closed by this Court on 29/10/2025.
- (3) Heard Ld. Advocate Mr. B. B. Solanki for the applicants.
- (4) Ld. Advocate for the applicants has reiterated the contents of the application and mainly submitted that, the Ld. Trial Court has committed grave error in deciding the suit and therefore, applicants wants to file an appeal against the order of Ld. Trial Court. It is submitted that, previously the applicants filed Special Civil Application No. 16761 of 2024 and 17054 of 2024 before the Hon'ble High Court, wherein the Hon'ble High Court permitted the applicants to withdraw the said application and also directed to file an application before the appropriate Court and the Hon'ble High Court has also exempted the period undergoing

litigation before Hon'ble High Court but in between the time has been lapsed and therefore, the applicants could not prefer the appeal within prescribed time and hence, there is delay of **236 days** in preferring the Appeal. It is submitted that there is no deliberate intention on the part of the applicant to cause delay and also submitted that the ground mentioned in the application is fully covered under the term 'sufficient cause' and therefore, Ld. Advocate for the applicants have prayed to grant the present application and condone the delay caused in filing the appeal.

- (5) As discussed above, though the notices have been duly served upon the opponents, but they have not appeared this Court and also not filed any reports, therefore, their rights of filing reply/objections have been closed by this Court on 29/10/2025.
- (6) Considering the submission of the Ld. Advocate for the applicants and the documents filed by the applicants and perusing the record of the present case, it is an admitted fact that, delay of **236 days** has been caused in filing Appeal against the impugned order. It also appears to this Court considering the contents of the application that the applicants have sufficiently explained the delay caused in filing appeal.

(7) At this stage it is profitable to refer the observations made by ;

(A) Hon'ble Supreme Court in the case of ***Maniben Devraj Shah v/s Municipal Corporation of Brihan Mumbai***, reported in ***AIR 2012 SC 1629*** wherein it is held in para 18 as under :

"18. What needs to be emphasized is that even though a liberal and justice oriented approach is required to be adopted in the exercise of power under Section 5 of the Limitation Act and other similar statutes, the Courts can neither become oblivious of the fact that the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the cost. What colour the expression "sufficient cause" would get in the factual matrix of a given case would largely depend on bonafide nature of the explanation. If the Court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bonafides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay. In cases involving the State and its agencies/ instrumentalities, the Court can take note of the fact that sufficient time is taken in the decision

making process but no premium can be given for total lethargy or utter negligence on the part of the officers of the State and / or its agencies / instrumentalities and the applications filed by them for condonation of delay cannot be allowed as a matter of course by accepting the plea that dismissal of the matter on the ground of bar of limitation will cause injury to the public interest."

- (B) The Hon'ble High Court of Gujarat in the case of ***Manjulaben Govindbhai Versus State Of Gujarat*** reported in **2023(0) AIJEL-HC 246020** has held in para 6 as under:

"6. This Court has also perused the order passed by learned Co-ordinate Bench and having regard to the reasons stated in the said decision, more particularly for reasons stated at paragraphs no. 6 to 8, which are reproduced herein-below, in the considered opinion of this Court, the delay is required to be condoned.

*'6. Apt would be, the judgment in the case of Collector, Land Acquisition, Anantnag and another vs. Mst. Katiji and others reported in AIR (1987) SC 135 wherein the **Apex Court has held and observed that while condoning the delay, liberal approach be adopted.** In yet another decision of the Apex Court in the case*

of S. Ganesharaju (D) Thr. L. Rs. & another vs. Narasamma (D) Thr. L. Rs. & Others reported in (2012) 4 SCALE 152 , it has been held and observed that the expression 'sufficient cause' has to be given a liberal construction so as to advance substantial justice. It is held that unless the respondents are able to show any malafide on the part of the applicants in not approaching the Court within limitation, generally as a normal rule delay should be condoned.

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8. "

- (8) Considering the contents of the application, ratio laid down by Hon'ble Supreme Court as well as Hon'ble High Court of Gujarat in the Judgments discussed above and as per the settled position of law, while dealing with the application for condonation of delay, Courts are required to take lenient view and liberal approach and it is always desirable that the issues between the parties are decided on merits instead of throwing out the matter on technical grounds. Further, it also appears that, the applicants have sufficiently explained the delay and it is always desirous that substantial justice be done and for that it is required to give proper opportunity to the litigants. In the present case also, it appears that, the mixed question of law and facts

are involved in the accompanying appeal, which requires adjudication on merit. Therefore, it appears that non condonation of delay would cause prejudice and affect the substantial rights of the parties and hence, this Court deems it fit to condone the delay in filing the present Appeal in the interest of justice. Hence the following order is passed in the interest of justice:

:-: O R D E R :-:

1. This Civil Misc. Application for condonation of delay is hereby **Allowed**.
2. Delay of 236 Days in preferring Appeal is hereby condoned.
3. Registry is hereby directed to register the appeal and place before this Court.

Signed and pronounced today in Open Court on this **8th** day of **July, 2026**.

Date :-08/07/2026
Una

(Sunil Mahendrabhai Govani),
3rd Additional District Judge,
Una, District: Gir-Somnath.
UID : GJ00918