

Received on : 25 / 03 / 2026

Registered on : 25 / 03 / 2026

Decided on : 18 / 05 / 2026

Duration : YY MM DD
00 01 24

Exh. :- 05

**BEFORE THE HON'BLE PRINCIPAL DISTRICT JUDGE
MAHISAGAR AT LUNAWADA.**

Civil Misc. Application No. 10 of 2026

Applicant (original plaintiff) :-

Parmar Khatubhai Dabhabhai
Age – 56 years, Occupation – Agriculture,
R/o. Rajpur, Tal. Balasinor, Dist. Mahisagar.

V E R S U S

Opponent (original defendant) :-

Yusufmiya Kalumiya Malek
Age – 57 years, Occupation – Agriculture,
R/o. Rajpur, Tal. Balasinor, Dist. Mahisagar.

Appearance :-

Ld. Advocate Ms. R. K. Panchal for applicant
Ex-parte against the opponent

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

- (1) That the present applicant (original plaintiff) has filed a Regular Civil Suit No.32/2024 against the present opponent (original defendant). The plaintiff has also filed an interim injunction application at Exh.5, along with the suit, which

was dismissed by the Ld. Additional Senior Civil Judge, Balasinor on 05.02.2026. Therefore, being aggrieved and dissatisfied with the said order, the applicant / original plaintiff decided to file a Miscellaneous Civil Appeal but, as per say of the applicants, it caused delay of 20 days and therefore this application is preferred to condone such delay.

- (2) It is submitted by the applicant that the appeal against the order should be filed within 30 days from the order but there was a marriage in family of the plaintiff's advocate and thereafter the plaintiff felt ill. Thereafter niece of the plaintiff committed suicide on 05.03.2026 and under all such circumstances, the applicant could not filed an appeal within prescribed time limitation and delay of 20 days has been caused. Therefore, by filing present application, the applicant has requested to condone the delay in filing an appeal.
- (3) Though being served with the notice, the opponent has not appeared personally or through his advocate and therefore an ordered to proceed this matter ex-parte against the opponent has been passed on 23.04.2006.
- (4) I have given my thoughtful consideration to the submissions made by Ld. Advocate appeared on behalf of the applicant. He has reiterated the facts narrated in the application memo and requested to allow present application.
- (5) So far as condonation of delay is concerned, the judgment of Hon'ble Apex Court in the case of **B. Madhuri Goud V/s. Damodar Reddy** which is reported in **2012 CJ (SC) 1413**

comes into way and wherein the Hon'ble Apex Court has laid down the ratio that;

- (a) Ordinarily a litigant does not stand to benefit by lodging an appeal late.
 - (b) 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.
 - (c) 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.
 - (d) 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 right in injustice being done because of a non-deliberate delay.
 - (e) There is no presumption that delay is occasioned deliberately, or on account of culpable negligence or on account of malafides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.
 - (f) 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.
- (6) Therefore, considering the above dicta in the case of ***B. Madhuri Goud*** of the Hon'ble Apex Court and to have result on merits and in the interest of substantial justice, the delay which is caused is required to be condoned. Therefore,

considering the facts of the present case, as per the legal statute, the applicant has also legal right to file an appeal and to put his case before the Appellate Court also and considering such aspect and reasons assigned by the applicants, delay of 20 days is required to be condoned and therefore the following order is passed.

-: ORDER :-

The present application is hereby allowed and delay caused for filing Miscellaneous Civil Appeal, against the order passed by the Ld. Additional Senior Civil Judge, Balasinor below interim injunction application (Exh.5) on 05.02.2026 in Regular Civil Suit No.32/2024, is hereby condoned.

The registry is directed to register Miscellaneous Civil Appeal accordingly.

Copy of this order be kept with the Miscellaneous Civil Appeal.

No order as to costs.

Pronounced in the open court today,
on this 18th day of May, 2026.

Date : 18.05.2026.
Lunawada.

(M. N. Gadkari)
Principal District Judge,
Mahisagar at Lunawada.
[GJ00425]