



Received on : 01/12/2025

Registered on : 01/12/2025

Decided on : 16/04/2026

Duration : 0Y 4M 15D

IN THE COURT OF 5th ADDITIONAL SESSIONS JUDGE, AT RAJKOT.

CIVIL MISC. APPLICATION NO. 134 of 2025

PETITIONER

- : 1.Shri Ghanabhai Balahai Ramani,**
Aged:59, Occupation: Farming,
2.Dipakbhai Vallabhai Ramani,
Aged:33, Occupation: Farming,
3.Legal Heirs of Babubhai Lakhabhai Ramani,
A.Labhuben Babubhai Ramani,
Age-59, Occ. Farming,
B.Harilal Babubhai Ramani,
Age-59, Occ. Farming,
C.Manubhai Babubhai Ramani,
Age-59, Occ. Farming,
D.Smt Varshaben D/o Babubhai Ramani
W/o Prakashbhai Nakrani,
Age-59, Occ. Farming,
All are resident of Gel Krupa, Near Ghanshyam
Petrol Pump,Aatkot, Jasdan, Dist-Rajkot.
4. Jerambhai Valabhai Hirpara,
Age-59, Occ.Farming,
R/o Jay Khodiyar, Ghanshyam Petrol Pump,
Aatkot, Ta. Jasdan, Dist-Rajkot.
5. Ramjibhai Valabhai Hirpara,
Age-61, Occ.Farming,
R/o Jay Vihalnath, Ghanshyam Petrol Pump,
Aatkot, Ta. Jasdan, Dist-Rajkot.

V E R S U S

RESPONDENTS

- 1. Nagjibhai Jivrajbhai Aslaliya,**
Age-76, Occ.Farming,
R/o Panchayat Road, Beside SBI Bank,
Mu.Aatkot, Ta.Jasdan, Dist-Rajkot.
- 2. Deceased babubhai Jivrajbhai Aslaliya,**
A.Ashwinbhai Babubhai Aslaliya,
B.Sanjaybhai Babubhai Aslaliya,
C.Jayeshbhai Babubhai Aslaliya,
D.Labhuben Babubhai Aslaliya,
Adult, Occ.Business,
All R/o – Rameshwar Park, Estron Chowk,
Street No.1, Nanamava Road, Rajkot.
- 3. Vallabbhbhai Jivrajbhai Aslaliya,**
Age-60, Occ.Farming,
- 4. Jentibhai Gopalbhai Aslaliya,**
Age-72, Occ.Farming,
- 5. Kanubhai Gopalbhai Aslaliya,**
Age-66, Occ.Farming,
Res. No.3 to 5 are R/o Radhanagar Street No.3,
Field Martial Wadi, Nanamava Road, Rajkot,

Appearance:

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Mr. P. J. Prajapati, Learned Advocate for the petitioners.

Mr. A. H. Joshi, for the respondents.

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:: JUDGMENT ::

- 1.** The present petition has been filed by the petitioners for condoning the delay of 75 days in filing the appeal challenging the Judgment/order dated 07.08.20245 passed by Learned Principal Senior Civil Judge, Jasdan in RCS No.101 of 2019.
- 2.** The learned Advocate has stated that the petitioners are doing farming and labour work for the livelihood of their family. Further stated that the petitioners are illiterate person and as they are not having the knowledge of provisions of law, they could not file the appeal within the prescribed limit of time period. Further stated that after inquiring

about the case they got the information of judgment of the learned Trial Court on 10.11.2025 through their Advocate and on the very next day they applied for certified copy of the judgment and after getting the same the present petition has been filed alongwith the appeal to condone the delay in filing the appeal. The petitioners have stated that the present delay is not intentional and as not having adequate information about the provisions of law and status of the case the present delay is caused.

- 3.** The Appellant submits that the Respondent obtained the impugned decree by practicing fraud upon the Court through 'smart pleading' and the suppression of material facts. The Respondent's allegations regarding forcible eviction and threats are entirely unsubstantiated and were concocted to mislead the Court into granting an *ex-parte* order. Furthermore, the Appellant was denied a fair trial and the opportunity to file a written statement or cross-examine witnesses due to the professional negligence of their previous counsel, who failed to intimate them regarding the proceedings. As the Respondent has failed to prove their case on merits and the judgment was obtained through procedural overreach, the same is unsustainable in the eyes of the law."
- 4.** Further the petitioners have stated that first appeal is a constitutional right and if it will not be granted to the present petitioners they will have to suffer irreparable hardships, therefore, the present petitioners prayed to condone the delay of 75 days in the larger interest of justice.
- 5.** Per-contra, after service of summons/notice the respondents have appeared through the learned Advocate who has orally argued that the present delay petition is filed just for the purpose of harassing the defendants. Further stated that the statement of petitioner regarding lack of legal knowledge is baseless as the RCS No.101/2019 is filed by

them in the year 2019 and they have regularly appeared before the learned Trial Court through their assigned learned Advocate. Further stated that the petitioners were well acquainted with the delivery of judgment and the cause of delay is not explained, which clearly shows the attitude of the respondents and the present delay is intentional. Further stated that the petitioners have just said that they were not having the knowledge of the judgment is not sufficient to allow the present petition, the petitioners are duty bound to explain the day to day delay and after considering the same this Court should pass the order. Further stated that the learned Trial Court has considered all the facts of the RCS No.101/2019 at length and after considering the same, it has been decided by the learned Trial Court on merit, therefore, just to harass the respondents the present petition is filed. Consequently , the learned Advocate prayed to reject the present petition with costs.

6. This court has heard the oral submissions of learned Advocates appearing for the parties.
7. It appears that on completion of trial, the learned Trial Court has rejected the RCS no.101/2019 vide order dated 07-08-2025 and being aggrieved and dissatisfied with the said judgment/order the present petition has been filed by the petitioners seeking condonation of 175 days delay in filing the appeal against respondents.
8. I have considered the decisions on which the present appellant have relied. In addition to the above decisions, to deal with the present issue in the case on hand it is trite to keep in mind the decision of **The Hon'ble Supreme Court held in the case of Collector Land Acquisition, Anantnag & ... vs Mst. Katiji & Ors that;**

3."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.

4. 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 vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. 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.

9. Applying the ratio laid down in decision (supra) reveals that the Court has to examine the existence of reasonable grounds to examine the merit of delay condonation petition.

10. The primary function of the Court is to adjudicate the dispute between the parties and to advance substantial justice. The rule of limitation is not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The Law of Limitation is thus founded on public policy. The condonation of delay is a matter of discretion of the Court. The Section 5 of the Limitation Act does not say that such discretion can be exercised only, if the delay is within the certain limit. The length of delay is no matter, acceptability of the explanation is the only criteria. In every case of delay, there can be some lapse on the part of the litigant concerned. The words "sufficient cause" means under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice can be done. The Court should be ordinarily lenient and liberal in determining the

sufficiency and reasonability of ground for condonation of delay so as to see that no meritorious matter is thrown away on a technical plea of delay.

11. It is important to note that the right and dispute of the parties is required to be decided on merits. The parties shall not be deprived of their right to get justice only on the technical ground of limitation. As per settled legal position held by the Hon'ble Apex Court in many decisions, while considering the question of condonation of delay, the Court should take a liberal view and while considering the application for condonation of delay, no strait jacket formula is prescribed to condone the delay. If sufficient ground has been made out, then the Court has to take lenient view. Therefore, I am of the view that the right of the parties is required to be decided on merits rather than on the technical ground of limitation. From the records it appears that the opponents have failed to secure the presence before this Court and also failed to make any averments regarding the delay petition. In the present scenario if this Court allows this application, then the opponents will neither suffer in any manner, nor it will cause any prejudice. If this Court rejects this application only on the technical ground, then the applicant would be deprived of its right of getting justice. Therefore, the contention raised by the learned advocate for the applicant is required to be taken into consideration. I am of the view to condone the delay and to allow this application. Hence, I pass following final order.

:: ORDER ::

1. The present delay condonation petition viz. **CMA No.134 of 2025** is hereby allowed subject to the following condition.
- 2.The petitioners are directed to deposit an amount of Rs.2,000/- to

District Legal Services Authority, Rajkot.

3.The registry is directed to register the Regular Civil Appeal subject to compliance of the aforesaid condition stated in point no.2 of this order.

Pronounced in open Court today at Rajkot on this **16th day of April, 2026.**

Date :- 16/04/2026

Place:- Rajkot.

[IKRAMKHAN BASIRKHAN PATHAN]

5th Additional District & Sessions Judge,
Rajkot, UIC Code No. GJ 00 614

//V.V.Pandey//