

GJVD220000092023



Received on : 10/01/2023

Registered on : 10/01/2023

Decided on : 17/08/2026

Exh. No :

IN THE COURT OF 2nd ADDITIONAL DISTRICT JUDGE,
VADODARA @ DABHOI.

CMA DC No.2/2023

1. Heirs of late Tadvī Bhayjibhai Vanjibhai,
- 1/1. Tadvī Kanjibhai Vanjibhai,
Age: 62, Occupation: Farming,
- 1/2. Tadvī Karshanbhai Vanjibhai,
Age: 55, Occupation: Farming,
2. Heirs of Late Lakshman Vanjibhai Tadvī and Late Jethiben
Lakshmanbhai Tadvī,
- 2/1. Tadvī Vanitaben Lakshmanbhai,
Age: 25, Occupation : Farming,
All r/o. Simaliya Navi Vasahat, Ta.: Dabhoi, Dist.: Vadodara.

.....Applicants**VERSUS**

- Heirs of Tadvī Premabhai Vanjibhai,
1. Tadvī Shantaben Premabhai (Wife),
2. Heirs of Late Tadvī Raysingbhai Premabhai,
- 2/1. Tadvī Bhavnaben Raysingbhai (Wife)
- 2/2. Tadvī Sahdevhbhai Raysingbhai (Grandson)
(Guardian and mother of the minor is Tadvī Bhavnaben Raysingbhai)
3. Tadvī Hirabhai Premabhai (Son)
4. Tadvī Vijaybhai Premabhai,

All are r/o. Simaliya Navi Vasahat, Ta.: Dabhoi, Dist.: Vadodara.

.....Respondents**Appearance:**-----
Mr. L. J. Patel, Learned Advocate for the Applicants.Mr. S. A. Belim, Learned Advocate for the Respondent No.4.

// O R D E R //

- [1] The present application has been filed by the applicants under section 5 of the Limitation Act, 1963 for seeking the condonation of delay of approx. 3 years 10 months, in filing the Appeal against the order dated 10.12.2018 passed in CMA No.12/2018 by the Ld. 2nd Additional Civil Judge, Dabhoi.
- [2] Initially the present application was filed by the applicants against the Tadv Premabhai Vanjibhai and Tadv Vijaybhai Premabhai by showing them as the legal heirs of Late Tadv Bhayjibhai Vanjibhai. During the proceedings off the present application, the Ld. Advocate for the applicants had moved an application at Exh.12 and declared that Tadv Premabhai Vanjibhai has expired and also seek permission to implead his legal heirs as respondents in the present case which was allowed by the Ld. Predecessor of this Court vide order dated 05.01.2024 and the applicants had filed the amended application which is kept with Exh.1.
- [3] After filing of the application, notice was duly served upon the respondents and Ld. Advocate Mr. S. A. Belim has appeared on behalf of the respondent - Tadv Vijaybhai Premabhai and has filed reply to the application at Exh.17 wherein he has opposed the present application.
- [4] It is argued on behalf of the applicants that, CMA no.12/2018 was filed for seeking probate and it was decided by the Ld. Trial Court vide order/judgment dated 10.12.2018 and the application for probate was allowed. It is further averred in the application filed by the applicants that they did not have any knowledge about the impugned order and they come to know about the said order only in the year 2022, when the respondent had produced the said order before the Deputy Collector in Case No.63/2022. It is further argued on behalf of the applicants that as they had no knowledge about the impugned order, so the period of limitation for filing the appeal against that order did not start and as soon as they come to know about the order, they had applied for certified copies of the order on

13.10.2022 which was received by them on 21.10.2022 and they have challenged the impugned order with the present application. It is further argued that, the period of limitation should be counted from the date of knowledge and the applicants had come to the knowledge of the impugned order on date 10.10.2022 therefore, the present application is not barred by limitation. It is further argued that, if there is any delay in filing the appeal it was unintentional and if the present appeal would not be admitted, an irreparable injury would be caused to them. The Ld. Advocate for the applicants has prayed that, the present application may be allowed and the delay in filing the appeal may be condoned and appeal against the impugned order be admitted.

- [5] It is argued on behalf of the respondent that the present application filed by the applicants has no merits and it deserves to be dismissed with heavy cost. It is further argued that the impugned order is passed under the provisions of Indian Succession Act, 1925 and a Regular Civil Appeal under section 96 read with order-41 of CPC is not maintainable against that order. It is further argued that provision of appeal against the orders passed under Indian Succession Act is contained in section 299 of the Indian Succession Act, 1925 and the said Appeal is to be filed before the High Court, therefore, the present appeal is not maintainable. It is further argued that on the basis of impugned order, the respondent had got the entry No.2464 recorded in the revenue record and the copy of the probate order had been submitted in E-dhara, Mamlatdar on 30.04.2019. It is further argued that, the entry No.2464 was rejected vide order dated 15.07.2019 and an application was filed vide Application No.95/2019 before the Deputy Collector, Dabhoi and after the order passed in that application entry No.2518 was recorded in the revenue record. It is further argued by the respondent that both these entries amounts to public notice and are reflected in village form No.7/12 therefore, the contention of the applicants that, they

had no knowledge about the impugned order is false and concocted. It is further argued on behalf of the respondents that, it is the settled position of law that after the expiration of the prescribed period to file any Appeal or application, the applicant needs to explain each day's delay, but in the instant case, the applicant has not explained the reasons of delay in filing the Appeal. It is further argued that the submission of the applicant that they did not have knowledge of the impugned order passed in Probate Application is false and concocted because the Ld. Trial Court had issued order of publication regarding the probate in the local newspapers and other conspicuous places however since no objections were raised, the Ld. Trial Court passed impugned order in accordance with law. Further, it is further argued on behalf of the respondents that, it is the settled principle that once the limitation period starts to run, it never stops and therefore in absence of any sufficient cause shows by the applicants, the present application shall not be allowed. It is further argued by the Ld. Advocate for the respondents that it is submitted by the applicants that they did not have any knowledge about the impugned order, which was passed by the Ld. Civil Court and it had come into knowledge of that order in October, 2022 and therefore, there is no delay in filing the appeal, but as per the Article-116 of the Limitation Act, it is the date of the decree or order, from which the Limitation period for filing the appeal, starts and not from the date of knowledge, so date of knowledge is irrelevant. With these arguments, Ld. Advocate for the respondent has prayed that the present application may be dismissed with the exemplary cost.

- [6] I have heard the arguments of the parties and perused the record. In **Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and others¹**, the Hon'ble Supreme court has laid down the

1 CIVIL APPEAL NOS.8183-8184 OF 2013 (Arising out of S.L.P. (C) Nos. 24868-24869 of 2011) decided 13/9/2013

principles to decide *sufficient cause* in the today's context. It has been held in this case that:

"11. In **Improvement Trust, Ludhiana v. Ujagar Singh and others** (2010) 6 SCC 786, it has been held that while considering an application for condonation of delay no straitjacket formula is prescribed to come to the conclusion if sufficient and good grounds have been made out or not. It has been further stated therein that each case has to be weighed from its facts and the circumstances in which the party acts and behaves.

12. A reference to the principle stated in **Balwant Singh (dead) v. Jagdish Singh and others** (2010) 8 SCC 685 would be quite fruitful. In the said case the Court referred to the pronouncements in **Union of India v. Ram Charan** AIR 1964 SC 215, **P.K. Ramachandran v. State of Kerala** (1997) 7 SCC 556 and **Katari Suryanarayana v. Koppiseti Subba Rao** (2009) 11 SCC 183 and stated thus:-

"25. We may state that even if the term "sufficient cause" has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the party concerned. The purpose of introducing liberal construction normally is to introduce the concept of "reasonableness" as it is understood in its general connotation.

26. The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly."

13. Recently in **Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai** (2012) 5 SCC 157, the learned Judges referred to the pronouncement in **Vedabai v. Shantaram Baburao Patil** (2001) 9 SCC 106 wherein it has been opined that a distinction must be made between a case where the delay is inordinate and a case where the delay is of few days and whereas in the former case the consideration of prejudice to the other side will be a relevant factor, in the latter case no such consideration arises. Thereafter, the two-Judge Bench ruled thus: -

"23. 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.

24. What colour the expression "sufficient cause" would get in the factual matrix of a given case would largely depend on bona fide 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."

Eventually, the Bench upon perusal of the application for condonation of delay and the affidavit on record came to hold that certain necessary facts were conspicuously silent

and, accordingly, reversed the decision of the High Court which had condoned the delay of more than seven years.

14. In **B. Madhuri Goud v. B. Damodar Reddy** (2012) 12 SCC 693, the Court referring to earlier decisions reversed the decision of the learned single Judge who had condoned delay of 1236 days as the explanation given in the application for condonation of delay was absolutely fanciful.

15. From the aforesaid authorities the principles that can broadly be culled out are:

- (i) There should be a liberal, pragmatic, justice oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.
- (ii) The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.
- (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.
- (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.
- (v) Lack of bonafides imputable to a party seeking condonation of delay is a significant and relevant fact.
- (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.
- (vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.
- (viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.
- (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.
- (x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.
- (xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.
- (xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.
- (xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

16. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are: -

- (a) An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.
- (b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

(c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

(d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters.”

- [7] Recently, the Hon’ble Supreme Court in **Thirunagalingam vs. Lingeswaran & Anr.**² has again reiterated the principles to ascertain the sufficiency of cause in cases of condonation of delay under section 5 of the Limitation Act and has held that it is a well-settled law that while considering the plea for condonation of delay, the first and foremost duty of the court is to first ascertain the bona fides of the explanation offered by the party seeking condonation rather than starting with the merits of the main matter. The Hon’ble Supreme Court has further held that this Court has repeatedly emphasised in several cases that delay should not be condoned merely as an act of generosity. The pursuit of substantial justice must not come at the cost of causing prejudice to the opposing party.
- [8] The applicant has filed the application for condonation of delay in filing the Appeal against the impugned order dated 10.12.2018, passed by the 2nd Addl. Civil Judge, Dabhoi in CMA No.12/2018. The perusal of the record shows that the applicant seeks to condone the delay and wants to challenge the impugned order by the way of filing an Appeal under section 96 read with Rule-41 of the CPC. It is pertinent to mention here that section 96 of CPC provides appeal from original decree and an order passed in an application for probate cannot be considered as a decree under section 2(2) of the CPC. Further, the probate application has been decided by the Ld. Civil Court under the provisions of the Indian Succession Act, 1925 and the order passed under the Indian Succession Act are required to be challenged under the section 299 of the said Act and according to that provision appeal against the order, lies before the Hon'ble High Court. Further, on query from the Ld. Advocate for the applicants that how an order passed in

2 Arising out of SLP (C) No. 17575 of 2023 decided on 13.05.2025

Probate Application can be considered as a decree, he has not given any submissions.

- [9] However, though this Court is of the view that, an order passed in a Probate application cannot be challenged under section 96 read with Order-41 of the CPC but still when this Court looks into the merits of the present application, it is of the opinion that the present applicant has failed to show any *sufficient cause* for not preferring the appeal within the prescribed period of limitation.
- [10] It has been contended by the applicants that they were not aware about the order dated 10.12.2018 passed in CMA-DC No.12/2018. The perusal of the record shows that except the averments in the application, the applicant have not brought any material on record in support of that contention. Further, this Court finds force in the argument of Ld. Counsel for the respondents that the limitation period for filing the appeal starts from the date of the order or decree and not from the date of knowledge of the party regarding such order.
- [11] It is the settled position of law the once the limitation period is starts to run, it never stops. Further, if any party seeks condonation of the delay in filing of any application or appeal, it has to explain each day's delay. Further, while deciding the application of the nature like the present one, the court has to consider the fact that a right has been accrued in the favour of the other party and it would be resulting in miscarriage of justice if the application is decided without sufficient cause being shown by the party due to whose failure the delay was caused.
- [12] The perusal of record shows that the applicant has merely averred that they had no knowledge about the order passed in CMA-DC No.12/2018. The applicants have failed to show any due diligence on their part and their claim lack *bonafide*, thus they have failed to show that they have been prevented by sufficient cause to prefer the appeal against the impugned

order passed in of CMA-DC No12/2018 within the prescribed period. So, in view of the principles and observation of the law laid down by Hon'ble Apex Court, and considering the period of delay, conduct and behavior of the applicant, the present application also lacks merits if it is considered on the aspect of delay and therefore, it is rejected with the following order.

// ORDER //

- 1) The present Civil Misc. Application is hereby rejected.
- 2) The file be consigned to record room.
- 3) No order as to cost.
- 4) The R&P of the CMA No.12/2018 be sent to the concerned Court with the copy of this order.

Signed and Pronounced in the Open Court on this 17th day of August, 2026.

DABHOI
DATE : 17/08/2026

/SMC/

Sd/-
(RAHUL SHARMA)
2nd ADDITIONAL DISTRICT JUDGE,
VADODARA @ DABHOI.
CODE No. 01588.