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Exh.

**IN THE COURT OF 3rd ADDITIONAL SENIOR CIVIL JUDGE,
AHMEDABAD [RURAL], AT. NAVRANGPURA, AHMEDABAD.**

CIVIL MISCELLANEOUS APPLICATION NO. 02 OF 2021

Applicants : [1] Bharatbhai Gordhanbhai Patel
Age: 57, Occupation : Agricultural
Religion ; Hindu,
R/o. 9, Swami Gunatinagar Society,
Memnagar, Ahmedabad pin-380052.
Mobile No. 98980 46323.

Versus

Opponents : (1) Hemanginiben Jayantilal Patel
(2) Purviben Jayantilal Patel
(3) Swetaben Jayantilal Patel
(4) Linaben Wd/o. Janaklal Jayantilal Patel
(5) Minor Dipsaben Janakbhai Patel and Linaben
Patel is her guardian.

Opponent No. 1 to 5 aged-adult,
Occupation : Agriculture/Business, Religion – Hindu,
No. 1 to 5 residing at Urmikunj Society, Kalpataru
Bungalow, B/h. Commerce College, Navrangpura,
Ahmedabad.

Subject : Application for delay condonation.

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APPEARANCE :-

- (i) Ld. Advocate for Applicant : Mr. V.P. Acharya.
(ii) Ld. Advocate for Opponent Nos.1 to 5 : Mr. G.K. Patel
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J U D G M E N T

1. This is an application filed by the applicant (original plaintiff) against the opponents (original defendants) under section 5 of the Limitation Act for condonation of delay and as per the prayer clause 5 (A) the plaintiff has calculated delay of 13 years 8 months for restoration of original suit No.693/1994 which came to be dismissed by order dated 14.4.2007. The copy of the order of dismissal of this suit passed below Ex.1 in the main suit is produced at Mark-3/1.
2. On service of the notice, the opponents filed the appearance and filed Vakalatnama at Ex. 9 and the reply to the delay condonation application at Ex.10. The applicant has also filed written arguments at Ex. 12.
3. The delay of about 14 years sought to be condoned on the ground of illness of the applicant/plaintiff himself and his mother. In the present application, the applicant shown to be aged about 57 years and in paragraph-5, the grounds pleaded

that the applicant/plaintiff met with the injury on account of accident on 17.02.2007 and thereafter also applicant met with the second time in the year 2013 and therefore, has claimed to be in the bedridden condition. The applicant has produced on record the medical papers of 17.02.2007. The papers of the second accident is dated 02.03.2013.

The applicant has further claimed that her mother was aged and suffering from Arthiritis Rheumato (સાંધાનો વા) and from 07.10.2017 up to 23.07.2020 for all these interregnum period the papers related to the medical examination and treatment are produced on record.

4. The pleadings and the documents are opposed by the original defendants contending that the medical papers produced on record, do not justify for condonation of delay because plaintiff was not in that so disabled that he was not able to approach his advocate nor in personally come to the Court from 2007 to 2021. The plaintiff has sought condonation of delay on ground of his own illness which is for the period of 2007 and 2013. This delay condonation application is filed ultimately in the year 2021. The contention on behalf of the opponent/ defendants that medical certificate produced to the

effect issued by the concerned Doctor treated the plaintiff showing that the plaintiff was not in position to walk for what period. It is further contention that the suit was originally filed by the sole plaintiff and his medical defence is of the year 2007 and after almost 5 years he again met with the accident. It was not the justification that the plaintiff did not move anyway out of his home for any work and so unable and so, disabled that he was not able to contact the advocate nor able to give a power of attorney to file the restoration. Admittedly, the time limit prescribed by the act for 30 days as provided under Article 122 of the Limitation Act. This story put forward by the applicant/plaintiff does not justify on the illness of his own ground and the medical grounds of his mother. The medical condition of the mother was also not shown that for all these may years after 2013 the presence of the applicant was needed for 24 hours and therefore, the applicant was not able to approach his Ld.Advocate and was unable to file the restoration application.

The further point brought to the notice by the opponent side that the suit was dismissed in the year 2007 however, CMA No 117/2019 was against the rejection of the injunction application and that appeal was also dismissed by order

dated 11.08.2015 for want of the prosecution. Both these suit and the appeal of the applicant/plaintiff was dismissed for want of prosecution. Want of prosecution means the presence of either plaintiff or his advocate. The plaintiff/ applicant has also not shown the justification that his advocate was not available for that default cause the court passed the order for want of prosecution. This shows an intention and attitude on the part of the plaintiff and his Ld.Advocate. Not only that the another point brought to the notice that the applicant/plaintiff had in the year 2017 as per his own document produced vide list 9 had preferred an application before the Additional Secretary under section 7 of the Urban Land Ceiling Act requesting for grant of permission. Thus, the documents produced by the plaintiff/ applicant itself shows that that the suit was dismissed in 2007 for default and his own appeal against injunction application was also dismissed in the year 2015 for default and not taken care of for restoration but the plaintiff was conscious and anxious and alert for filing the application under section 7 under the Urban Land Ceiling Act.

5. It is settled principle of law that the Court should not be technical, more particularly not be highper technical while deciding the condonation of delay. This is not the application

where a short of span of condonation is prayed to be condoned but here the prayer is for condonation of delay is almost 14 years. Applicant is duty bound to explain the delay day-to-day and events-by-events. The grounds made out relying on the medical eventualities for the plaintiff has extinguish up to 2013 and the ground claimed on medical events eventualities related to the mother are not justifiable to condone this gross delay. Otherwise also, considering the suit, the main relief was only as to the injunction and the subsequent relief is claimed ownership of the suit property on the basis of adverse possession of the suit property. Ld. Advocate for the defendant has on merits attempted to show that the land was the new tenure land and the transaction even if any was not legal and valid one was the basic question. Under the aforesaid facts and circumstances, there seems to be no justification on the part of the plaintiff to seek relief of condonation for almost 14 years application, does not deserve to be allowed and hence the following order.

ORDER

1. The application is hereby rejected.
2. No order as to costs.

Dictated and pronounced in the open Court today on this 01st day of May,

2025.

Date : 01.05.2025

Place: Ahmedabad

[K. P. Pachode]

3rd Additional Senior Civil Judge
Ahmedabad (Rural) at Navrangpura
(Judge Code No. GJ00930)