

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CIVIL APPLICATION (FOR CONDONATION OF DELAY) NO. 2191 of
2025

In F/APPEAL FROM ORDER NO. 10402 of 2025

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MAHESHBHAI ISHWARBHAI PATEL
Versus
HARIBHAI MULAJIBHAI PATEL & ORS.

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Appearance:

MR. RAJAN J PATEL(6775) for the Applicant(s) No. 1

MR AKASHKUMAR H PATEL(12877) for the Respondent(s) No.

1,2,3,4,5,6,7,8

RULE SERVED for the Respondent(s) No. 10,11,9

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CORAM: HONOURABLE MR. JUSTICE MAULIK J.SHELAT

Date : 04/07/2025

ORAL ORDER

1. At the outset, learned advocate Mr.Akashkumar H. Patel for the opponent Nos.1 to 8 submits an affidavit in reply on behalf of opponent nos.1 to 11, which is taken on record.

2. Learned advocate V.S.Kothari would submit that due to inadvertent mistake on the part of the applicant, having filed the appeal before the wrong court resulted into delay in filing the present appeal.

2.1. Learned advocate Ms.Kothari would submit that benefit of Section 14 of Limitation Act be given to applicant and as

such, there is no deliberate and intentional delay on the part of applicant to file appeal after period of limitation. Inasmuch as, the appeal filed before the District Court concerned, was not filed with any delay but it was wrongly filed before the District Court concerned.

2.2. So, learned advocate Ms. Kothari would submit that delay in filing the present appeal is technical and may be condoned by this Court.

3. Per contra, learned advocate Mr. Patel would submit that there is a gross delay of 259 days in filing the appeal, which is deliberate and may not be condoned by this Court. Inasmuch as, after passing of the impugned order in appeal, the Trial Court has already framed the issue on 11th June, 2024, wherein applicant – plaintiff has sought 11 adjournments for submitting his evidence.

4. Lastly, learned advocate Mr. Patel would further submit that even if this Court accepts the application, thereby, condoned the delay in filing the appeal, it may do so by

imposing costs of Rs.10,000/- upon applicant.

5. Heard learned advocate Ms. V.S.Kothari for Mr.Rajan J. Patel for the applicant and learned advocate Mr.Akashkumar H. Patel for the opponents at length.

6. It is remained undisputed that applicant has wrongly challenged the order impugned in the appeal filed before this Court, before District Court by filing appeal and having so realized that such appeal before District Court concerned was not maintainable, withdrew it with liberty to file afresh before this Court. This was the reason, which caused delay in filing the appeal by the applicant before this Court.

7. After appreciating the averments made in the delay application and so also reply of opponent, I am of the view that considering the totality of facts and circumstances of the case, a sufficient cause is made out, hence, the delay of 259 days in filing the present appeal is required to be condoned, which is hereby condoned. The present application is allowed in terms of para 15(A).

8. So far as granting costs to opponent is concerned, the appeal filed before this Court is filed after period of limitation but it is maintainable, whereas appeal filed before the District Court concerned, which was held to be non-maintainable and thereby, opponents were required to defend it. The opponents could have asked for costs of wrongly prosecuted by applicant before District Court concerned in such appeal but having not prayed for and in fact not granted such costs by District Court concerned and so, in present application, such costs cannot be awarded.

9. Rule is made absolute.

(MAULIK J.SHELAT,J)

MOHD MONIS

Original copy of this order has been signed by the Hon'ble Judge.

Digitally signed by: MOHD MONIS(HC01900), PRIVATE SECRETARY, at High Court of Gujarat on 04/07/2025 19:14:53