

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CIVIL APPLICATION (FOR CONDONATION OF DELAY) NO. 2587 of
2026

In F/SECOND APPEAL/12263/2026

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JITENDRABHAI BHAILALBHAI MAHETA
Versus
MANAGER , ICICI BANK JASDAN BRANCH

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Appearance:
MR MANGAL V GADHAVI(11922) for the Applicant(s) No. 1

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CORAM: HONOURABLE MR. JUSTICE MAULIK J.SHELAT

Date : 03/08/2026

ORAL ORDER

1. Heard Mr. Mangal V. Gadhavi, learned advocate for the applicant.

2. At the outset, Mr. Gadhavi, learned advocate, would tender the additional affidavit in support of the application, the same is taken on record. It is submitted that the main reason of delay in filing the second appeal is that after his return from USA, the applicant has engaged the lawyer in February, 2024, but due to any reason, the learned advocate engaged by the applicant did not file the appeal for quite a long time and after having noticed this fact, in November, 2025, the applicant took the papers and handed it over to the learned advocate, who filed the Second Appeal.

2.1. According to Mr. Gadhavi, learned advocate for the applicant, there is no negligence on the part of the applicant coming before this Court. He would submit that by imposing reasonable cost upon the applicant, the delay may be condoned in the interest of justice.

2.2. Making the above submissions, Mr. Gadhavi, learned advocate, requests this Court to allow the present application.

3. Having heard Mr. Gadhavi, learned advocate at length and upon perusal of the averments made in the application as well as the additional affidavit submitted today on behalf of the applicant, it appears that the impugned judgment and decree was passed by the Appellate Court on 31.01.2023, whereas the Second Appeal was presented before this Court on 15.04.2026, thereby, there is a delay of 1053 days in filing the Second Appeal.

3.1. To explain the aforesaid delay, the applicant has come out with a case that between 13.02.2023 and 13.08.2023, he was under medical treatment at USA. To prove the aforesaid fact, a

copy of VISA issued by competent authority of the United States of America (USA) is annexed. The copy of VISA indicates that it was expired on 26.06.2023. There is nothing on record to show that the aforesaid VISA which was expired on 26.06.2023 came to be renewed further by the authority. Thus, the applicant could not have stayed until 13.08.2023 at USA, this can be viewed as a false statement made by the applicant on oath.

3.2. Yet, considering the age of the applicant and taking lenient view against him, this Court would not like to express any further comment and/or initiate any proceeding against him for making a false statement on oath.

3.3. Apart from the aforesaid, it is not the case of the applicant that he was not aware about the factum of passing of the judgment/decreed by the Trial Court in the year 2023. It is averred by the applicant that he had handed over the case file in the month of February, 2024 to learned advocate practicing in this Court. Though there is a reference about handing over the case file to one learned advocate Mr. Darshkumar Bunha in the month of February, 2024, who, according to applicant did not file the appeal

though repeatedly requested. Nonetheless, for quite a long time, i.e., for more than a year and half, the applicant did not bother to check as to what's progress in the process of filing appeal.

3.4. It is a bald statement made by the applicant that despite his repeated reminder, the said advocate had not filed the appeal, but applicant took about more than one and half year to get back the papers from the learned advocate concerned and hand it over to another learned advocate in December, 2025, who filed the appeal in the month of April, 2026 as aforesaid. The applicant has also not submitted anything on record to show that he has in fact handed over the case file to the aforesaid advocate and / or any notice issued by him for not filing the second appeal in time.

3.5. It is very easy to blame the advocate by the litigant, but without any substance and proof it would be very difficult for this Court to appreciate such contention though made on oath, especially when this Court has found that the applicant has made a false statement so far as the period of stay at USA is concerned. Rather, the aforesaid facts came out from this application would clearly shows the sheer negligence, carelessness and indolent

approach on the part of the applicant to institute Second Appeal before this Court after reasonable time, though made aware of the impugned judgement in the year 2023.

4. At this juncture, it would be profitable to place reliance upon the following decisions of the Hon'ble Apex Court, wherein the Hon'ble Apex Court has lucidly laid down the law in relation to condonation of delay by the Court.

4.1. It would be apt to first rely upon the decision of Honourable Supreme Court of India in a case of ***Rajneesh Kumar & Anr V/S Ved Prakash reported in 2024 (14) SCALE 406*** : 2024 INSC 891 wherein held as under:

"[10] It appears that the entire blame has been thrown on the head of the advocate who was appearing for the petitioners in the trial Court. We have noticed over a period of time a tendency on the part of the litigants to blame their lawyers of negligence and carelessness in attending the proceedings before the Court. Even if we assume for a moment that the concerned lawyer was careless or negligent, this, by itself, cannot be a ground to condone long and inordinate delay as the litigant owes a duty to be vigilant of his own rights and is expected to be equally vigilant about the judicial proceedings pending in the Court initiated at his instance. The litigant, therefore, should not be permitted to throw the entire blame on the head of the advocate and thereby disown him at any time and seek relief.

[12] As regards the law of limitation, we may refer to the decision of this Court in *Bharat Barrel & Drum MFG Co. v. The Employees State Insurance Corporation*, 1971 2 SCC 860, wherein this Court held as under:-

"The necessity for enacting periods of limitation is to ensure that actions are commenced within a particular period, firstly to assure the availability of evidence documentary as well as oral to enable the defendant to contest the claim against him; secondly to give effect to the principle that law does not assist a person who is inactive and sleeps over his rights by allowing them when challenged or disputed to remain dormant without asserting them in a Court of law. The principle which forms the basis of this rule is expressed in the maximum vigilantibus, non dormientibus, jura subveniunt (the laws give help to those who are watchful and not to those who sleep). Therefore, the object of the statutes of limitations is to compel a person to exercise his right of action within a reasonable time as also to discourage and suppress stale, fake or fraudulent claims."

(Emphasis supplied)

4.2. Likewise, in the case of ***K.B. Lal (Krishna Bahadur Lal) v. Gyanendra Pratap & Ors.***, reported in **2024 (4) Scale 759 : 2024 INSC 281**, wherein, after revisiting the law on the aspect of condonation of delay, the Hon'ble Apex Court has held as under:

*"10. There is no gainsaying the fact that the discretionary power of a Court to condone delay must be exercised judiciously and it is not to be exercised in cases where there is gross negligence and/or want of due diligence on part of the litigant (See *Majji Sannemma @ Sanyasirao v. Reddy Sridevi & Ors.* (2021) 18 SCC 384). The discretion is also not supposed to be exercised in the absence of any reasonable, satisfactory or appropriate explanation for the delay (See *P.K. Ramachandran v. State of Kerala and Anr.*, (1997) 7 SCC 556). **Thus, it is apparent that the words 'sufficient cause' in Section 5 of the Limitation Act can only be given a liberal construction, when no***

negligence, nor inaction, nor want of bona fide is imputable to the litigant (See Basawaraj and Anr. v. Special Land Acquisition Officer., (2013) 14 SCC 81). **The principles which are to be kept in mind for condonation of delay were succinctly summarised by this Court in Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy & Ors., (2013) 12 SCC 649, and are reproduced as under:**

“21.1. (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.

21.2. (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.

21.3. (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4. (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.

21.5. (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.6. (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.

21.7. (vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.8. (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.***

21.9. (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.***

21.10. (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."***

(Emphasis supplied)

4.3. It is also profitable to refer to rely upon ratio laid down by Honourable Supreme Court of India in a case of ***Pathapati Subba Reddy (Died) BY L RS & ORS V/S Special Deputy Collector (LA) reported in 2024 INSC 286 : 2024 (4) SCR 241 : 2024 (4) Scale 846***, wherein after referring to its previous decisions, summarized the case law on the issue of limitation vis-a-vis condonation of delay in context of "sufficient cause". It has been so observed and held as under:

"[26] On a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that:

(i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;

(ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;

(iii) The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally;

(iv) In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act;

(v) Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;

(vi) Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the Court is not satisfied with the cause shown for the delay in filing the appeal;

(vii) Merits of the case are not required to be considered in condoning the delay; and

(viii) Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamount to disregarding the statutory provision."

(emphasis supplied)

4.4 It is also profitable to rely upon the decision of the Hon'ble Supreme Court of India in the case of case of **Basawaraj and Another v. Special Land Acquisition Officer reported in 2013 (14) SCC 81**, wherein it is held as under:-

*"15. The law on the issue can be summarised to the effect that where a case has been presented in the Court beyond limitation, the applicant has to explain the Court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the Court within limitation. **In case a party is found to be negligent, or for want of bonafide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No Court could be justified in condoning such an inordinate delay by imposing any condition whatsoever.** The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the Court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature."*

(Emphasis supplied)

4.5. It is also profitable to rely upon the Hon'ble Supreme Court in the case of **Shivamma (DEAD) By Lrs Vs. Karnataka Housing Board & Ors. reported In 2025 INSC 1104**, in clear terms held

that where there is delay/laches on the part of the applicant in not prosecuting the legal remedy, in the absence of any sufficient cause made out by the applicant, the Court should not condone the delay while exercising its power under Section 5 of the Limitation Act, 1963. In the case of **Shivamma** (Supra), the Hon'ble Supreme Court has held thus: -

"258. The length of the delay is a relevant matter which the Court must take into consideration while considering whether the delay should be condoned or not. From the tenor of the approach of the respondents, it appears that they want to fix their own period of limitation for instituting the proceedings for which law has prescribed a period of limitation. Once it is held that a party has lost his right to have the matter considered on merits because of his own inaction for a long, it cannot be presumed to be non-deliberate delay and in such circumstances of the case, it cannot be heard to plead that the substantial justice deserves to be preferred as against the technical considerations. While considering the plea for condonation of delay, the Court must not start with the merits of the main matter. The Court owes a duty to first ascertain the bona fides of the explanation offered by the party seeking condonation. It is only if the sufficient cause assigned by the litigant and the opposition of the other side is equally balanced that the Court may bring into aid the merits of the matter for the purpose of condoning the delay."

(emphasis supplied)

5. Thus, considering the aforesaid facts and circumstances and applying the exposition of law supra to the case at hand, I am of the considered view that no sufficient cause made out by the applicant in filing the Second Appeal after a period of 1053 days. According to my considered view, this is a case of gross negligence, inordinate delay and indolent approach on the part of the applicant, which cannot be subscribed by this Court while exercising its power under Section 5 of the Limitation Act.

6. In view of the aforesaid discussions and reasons, I do not find any merit in this application, accordingly, it is hereby rejected. Registry shall refuse the registration of Second Appeal and any application filed therein. No order as to costs.

SHAHANAZ

(MAULIK J.SHELAT,J)