

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CIVIL APPLICATION (FOR CONDONATION OF DELAY) NO. 2557 of
2025
In F/FIRST APPEAL/7534/2025

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IQBALBHAI USMANBHAI AAGA & ANR.

Versus

JAVEDBHAI BHIKHABHAI KURESHI & ORS.

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Appearance:

NISHIT A BHALODI(9597) for the Applicant(s) No. 1,2

MS DIMPLE A THAKER(6838) for the Respondent(s) No. 3

RULE SERVED for the Respondent(s) No. 1,2,4

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CORAM: **HONOURABLE MR.JUSTICE MOOL CHAND TYAGI**

Date : 27/07/2026

ORAL ORDER

1. Heard learned counsels for the parties.
2. Mr. Nishit A. Bhalodi, learned counsel appearing on behalf of the original claimants/applicants vehemently submitted that the delay of 1910 days has occasioned in preferring the appeal against the impugned judgment and award dated 22.08.2019 passed in MACP No.17/2017. He further submitted that the certified copy of the impugned judgment and award was applied on 05.02.2025 and the same was received on the very same day. He submitted that initially, the claimants/applicants were not inclined to file the appeal but upon receiving the legal advice, they made up their minds to challenge the impugned judgment and award. Thereafter, they endeavoured to arrange the necessary funds for paying the Court fees and to meet out the other expenses. While arranging the said funds, a delay of 1910 days has occasioned in preferring the appeal. He further submitted that the claimants/applicants are ready and willing to waive the interest for the entire delayed period, if the appeal for enhancement is allowed. He

further submitted that considering the totality of facts and circumstances, a liberal approach is required to be adopted. In support of his contention, learned counsel for the applicants placed the reliance upon the judgment rendered by the Hon'ble Apex Court in case of ***Collector, Land Acquisition, Anantnag & Anr. v. MST. Katiji & Ors.*** [AIR 1987 SC 1353].

3. Per contra, Ms. Dimple A. Thaker, learned counsel appearing on behalf of respondent no.3/insurance company vehemently submitted that the delay has not been explained. She further submitted that no sufficient cause has been made out, therefore, the captioned appeal is liable to be dismissed.

4. Having considered the submissions of the learned counsels for the parties and having gone through the record, the main cause for not preferring the appeal within the prescribed period of limitation is the poverty of the claimants/applicants. The poverty of the claimants/applicants cannot be allowed to stand in the way of seeking legal recourse before the Court. Thus, having regard to the totality of the facts and circumstances, I am of the considered view that the delay has been sufficiently explained. At this juncture, it would be profitable to refer the judgment of the Hon'ble Apex Court rendered in the case of MST. Katiji & Ors. (supra), wherein the Hon'ble Apex Court has laid down the following guidelines for considering the application for condonation of delay and the same are reproduced hereinunder:-

"1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is con-doned the highest

that can happen is that a cause would be decided on merits after hearing the parties.

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."

5. Thus, having regard to the reasons for the delay narrated in the application, I am of the considered view that the claimants/applicants have made out sufficient cause to condone the delay. Hence, the delay deserves to be condoned on the condition that the claimants/applicants shall not be entitled to interest for entire delayed period, if the appeal for enhancement is allowed.

6. In view of the above, the captioned Civil Application stands allowed. No order as to costs.

HARSHIT

(MOOL CHAND TYAGI, J)