

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CIVIL APPLICATION (FOR CONDONATION OF DELAY) NO. 2215 of
2026****In F/MISC. CIVIL APPLICATION/13336/2026
In R/CIVIL APPLICATION/3747/2024
In F/MISC. CIVIL APPLICATION/18328/2024
In F/SECOND APPEAL/26372/2021****With
F/MISC. CIVIL APPLICATION NO. 13336 of 2026
In
R/CIVIL APPLICATION NO. 3747 of 2024**

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HIMMATBHAI GOVINDBHAI MISTRI & ORS.**Versus****KISHANKUMAR RAMANLAL PATHAK & ORS.**

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Appearance:**HCLS COMMITTEE(4998) for the Applicant(s) No. 1,2,3****MR HANNAN A QURESHI(11351) for the Applicant(s) No. 1,2,3****MR NIRAV C SANGHAVI(5950) for the Respondent(s) No. 10,11,6,9**

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CORAM:HONOURABLE MR. JUSTICE J. C. DOSHI**Date : 30/06/2026****ORDER**

1. Heard learned Advocate Mr. Hannan A Qureshi appearing for the appellants and learned Advocate Mr. Nirav C Sanghavi appearing for some of the respondents.

2. The civil application has been filed to condone the delay of 47 days caused in filing of restoration application for restoring delay application filed for condoning delay in filing of restoration application to restore main matter being F/Second Appeal No.26372 of 2021.

2.1 It has to be observed that, ordinarily, this Court would condone the delay of 47 days, however, in the present facts and circumstances, whereby in second appeal, challenge is made to the judgment and order passed by the learned Principal Senior Civil Judge, Kathlal in Regular Civil Suit No.119 of 2000 (new Suit No.39 of 2012) which was allowed in favour of the plaintiffs and defendants therein, who are the petitioners herein, who were directed to handover the peaceful and vacant possession of the disputed property. The judgment passed by the learned Principal Senior Civil Judge has been confirmed in Regular Civil Appeal No.111 of 2014 whereby the learned 2nd Additional District Judge, Kheda at Nadiad by its judgment and order dated 22.01.2020 dismissed the first appeal. The second appeal was at the filing stage and sufficient opportunity was granted to the petitioner to remove the office objection.

3. On 05.02.2026, this Court had passed the following order:

“1. On 04.12.2025, this Court passed following order :-

“When the matter is called out, learned advocate for the applicants was absent. However, as a last chance, stand over to 05.02.2026.”

2. Remarks in the cause list indicates that respondent nos.1,2,5 and 7 are respondents long back. Learned advocate Mr.Sanghavi for some of the respondents, under instructions, add some more fact that applicants nos.2 and 3 are also expired.

3. The matter is called out in both the sessions. In both sessions, learned advocate Ms.Joshi for the applicants did not remain present and

proceed in the matter. Consequently, Civil Application for condonation of delay stands dismissed for non prosecution. Needless to state that Misc. Civil Application and Second Appeal deserve no consideration for registration.”

4. Learned Advocate Mr. Nirav Sanghavi filed the reply on affidavit at page no.15 of the petition in para 5. He has stated as under:

*...“5. I further submit and say that hon'ble executing court again issued the possession warrant under provisions of order 21 rule 35 of cpc and directed to bailiff to submit the report of the execution of the warrant on or before 20.5.2026. I further say and submit that the warrant was executed through the bailiff on 20.5.2026 and accordingly possession disputed property was handed over to the plaintiffs after following to the due process of law. I further say and submit that bailiff has also drawn the panchnama and possession receipt on 20.5.2026. The copy of possession warrant, panchnama and possession receipt and bailiff report are annexed herewith and marked as **ANNEXURE R-2** to this affidavit.”...*

5. Therefore, going through the page nos.29, 30, 31, 32, 33, 34, 35 and 36 of the application, appears that the possession of the disputed property, which was a subject matter of dispute between the parties, has been handed over voluntarily by the present petitioner. In the aforesaid circumstances, the present application does not survive. It is to be noted that earlier application for condonation of delay of 534 days had been sought.

6. It would also appear that the second appeal was filed in the year 2020 and it is still remained there at the filing stage till the aforesaid order is passed. The appellant did not remain vigilant throughout to remove the office objection and in interregnum period, the impugned judgment and decree has been executed and on volition, the judgment debtor has handed over the possession of the disputed property. Thus, now nothing remains between the parties.

7. In the aforesaid circumstances, I find no justification in allowing this application. The captioned civil application for condonation of delay stands dismissed. All consequent miscellaneous civil applications and civil applications stands dismissed and the registration of second appeal is refused.

PARMAR KRISH

(J. C. DOSHI,J)