

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 13169 of 2026****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE MAULIK J.SHELAT**

Approved for Reporting	Yes	No

LILABEN D/O LALLUBHAI BHULABHAI ZALA W/O KALUBHAI
PRATAPSINH ZALA

Versus

DASHRATHSINH AMARSINH ZALA & ORS.

Appearance:

MR VIVEK P BAROT(13733) for the Petitioner(s) No. 1

CORAM: HONOURABLE MR. JUSTICE MAULIK J.SHELAT

Date : 11/09/2026

JUDGMENT

1. Heard Mr. Vivek P. Barot, learned advocate for the petitioner.

2. This petition is filed under Article 227 of Constitution of India seeking following reliefs:

“(A) That this Hon'ble Court may be pleased to admit and allow the present writ petition;

(B) That this Hon'ble Court may be pleased to quash and set-aside the impugn order dt. 29-06-2026 passed in Civil Misc. Application DC NO. 51 of 2026 by Ld. 4th Addl. District Judge, Anand (bearing annexure-A) and thereby be pleased to passed an order to condone the delay of 27 days in challenging the judgment and order dt. 28-02- 2026 passed in Regular Civil Suit No. 64 of 2021 by Ld. Addl. Civil Judge, Umreth (annexure-B) in the interest of justice;

(C) That pending admission, hearing and final disposal of this petition

this Hon'ble Court may be pleased direct the respondent to maintain status quo with respect to the ancestral suit property being situated at Village Sundalpura, Taluka: Umreth, District: Anand bearing Survey No. 329, Khata No. 469, measuring 2-64-05 Are in the interest of justice;

(D) That this Hon'ble Court may be pleased to remand back the matter in the interest of justice;

(E) That this Hon'ble Court may be pleased to pass such other and further order as the nature and circumstances of the case may require."

3. At the outset, Mr. Barot, learned advocate for the petitioner, would submit that very hyper technical approach was taken by Appellate Court while adjudicating the delay application seeking condonation of 27 days delay in filing Regular First Appeal. It is submitted that there was no intentional and/or malafide delay on the part of petitioner to file the appeal after period of 27 days. It is further submitted that sufficient cause was made out by the petitioner in the impugned delay application and as such, the averments made in the delay application remained uncontroverted by the respondent, as he chosen not to file any reply.

3.1. Mr. Barot, learned advocate, would submit that as per settled position of law, liberal approach requires to be taken by the Court while adjudicating the delay application and in the interest of justice, the Appellate Court ought to have exercised

the discretion in positive manner to advance justice rather than foreclosing the right of petitioner to submit his case on merits in the appeal.

4. Having heard, Mr. Barot, learned counsel for the petitioner at length, and upon perusal of the impugned order, *prima facie*, it appears that delay of 27 days in filing the Regular Civil Appeal was not condoned by the Appellate Court vide its impugned order dated 29.06.2026.

5. Having gone through the impugned order, *prima facie*, it appears that very hyper technical approach was taken by the Appellate Court while adjudicating the delay application. Indisputably, there was no gross and inordinate delay on the part of the petitioner in filing the regular civil appeal. The principles laid down by the Hon'ble Apex Court referred by Appellate Court in the impugned judgement, would not be applicable to the case at hand, inasmuch as there was neither any negligence nor was an inordinate delay on the part of the petitioner in filing the appeal. Moreover, the respondent chosen not to file any reply to the delay application, but orally objected. In such situation, it can be said that facts which were mentioned in impugned delay application remained

uncontroverted by the respondent.

6. The main reason for delay in filing the appeal was that the petitioner was not informed about the judgment by his advocate and such fact remained uncontroverted, as no reply was filed. To this, the Appellate Court took a serious note of the fact that the advocate who represented the petitioner before trial Court, has preferred the appeal.

6.1. It is unfathomable that how the fact of non-communication of the judgement at relevant time by an advocate would be disadvantage to the petitioner in a case where the appeal was filed by the very advocate. It is one thing to say that the advocate concerned has not timely intimated about the judgment and it is another thing that very advocate might have file appeal on behalf of the party. Such a pedantic approach on the part of Appellate Court cannot be countenanced by this Court, inasmuch as it is well settled law that while adjudicating the delay application, liberal approach requires to be taken and sufficient cause is to be construed liberally by the Court, thereby it can decide the *lis* on merit.

6.2. At this juncture, it would be apt to refer to and rely upon the decision of Hon'ble the Apex Court in the case of **Collector, Land Acquisition, Anantnag Vs. Mst Katiji**, reported in **(1987) 2 SCC 107**, wherein the Hon'ble Apex Court observed and held thus:

"[3] The legislature has conferred the power to condone delay by enacting S. 51 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on 'merits'. The expression "sufficient cause" employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters, instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:-

"Any appeal or any application, other than an application under any of the provisions of O. XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period."

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 condoned 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 nondeliberate 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. Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the 'State', which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a stepmotherly treatment when the 'State' is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file pushing, and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant non grata status. The Courts therefore have to informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits. Turning to the facts of the matter giving rise to the present appeal, we are satisfied that sufficient cause exists for the

delay. The order of the High Court dismissing the appeal before it as time barred, is therefore, set aside. Delay is condoned. And the matter is remitted to the High Court. The High Court will now dispose of the appeal on merits after affording reasonable opportunity of hearing to both the sides.”

(Emphasis supplied)

6.3. The aforesaid principles laid down by Hon'ble Apex Court in the year 1987 is still hold the field, as until date, it is not disturbed by the Hon'ble Apex Court.

7. The case at hand would not show that there was any negligent act and/or inordinate delay on the part of petitioner in filing the regular civil appeal before the Appellate Court; rather, non-condoning the delay by the Appellate Court would cause serious prejudiced to the petitioner who deprived to pursue his legal remedy by way of the appeal. The regular civil appeal is a statutory remedy available to the petitioner and such right of appeal should not be taken away by the Court by taking hyper-technical view in the matter. The Appellate Court could have taken note of the said fact and position of law while adjudicating the delay application. Prima facie, it appears that the Appellate Court has lost sight of such position of law resulted into rejection of the delay application.

8. Having considered the aforesaid facts and circumstances,

I am of the considered view that this is a case wherein without issuing any notice to the respondent, this Court can condone the delay of 27 days in filing Regular Civil Appeal by the petitioner.

9. Nonetheless, if the respondent will be aggrieved by this order, upon receipt of the copy of this order, it will be open for the respondent to file an appropriate application for recalling/modification of this order. But such application, shall be filed within period of one month from the date of receipt of copy of this order.

10. In view of the foregoing discussions and reasons, the present petition is allowed. Accordingly, the impugned order dated 29.06.2026 passed in Civil Misc. Application No.51 of 2026 by learned 4th Additional District Judge, Anand, is hereby quashed and set-aside. Consequently, the aforesaid Civil Misc. Application No.51 of 2026 is allowed. The Appellate Court is hereby requested to register the appeal and after hearing the parties the appeal shall be decided on its own merits, without being influenced by any of the observations so made herein above.

11. The petitioner shall have to serve the copy of this order to the respondent.

(MAULIK J.SHELAT,J)

DEEPAK GEHLOT