

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 14619 of 2025

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE MAULIK J.SHELAT

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Approved for Reporting	Yes	No
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VINODCHANDRA CHANDRAKANT THAKER & ANR.

Versus

KIRITKUMAR PARSHOTTAM DHOKAI

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Appearance:

MR.VINOD C THAKER(6678) for the Petitioner(s) No. 1,2

KRISHNAN M GHAVARIYA(8133) for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE MAULIK J.SHELAT

Date : 01/10/2026

JUDGMENT

1. Heard Mr. Vinod C. Thaker, learned advocate for the petitioners as also Mr. Krishnan M. Ghavariya, learned advocate for the respondent, at length.

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

“A) A writ of certiorari or any other writ, order, or direction may kindly be issued to quash and set aside the judgment and order dated 15.03.2017 passed by the Court of the Learned Principal Civil Judge, Dwarka at Dwarka passed by the court

of Learned Principal Civil Judge, Dwarka in Regular Civil Suit No.63 of 2008 whereby the suit of the present petitioners/applicants was dismissed in the interest of justice.

B) Pending admission hearing, and final disposal of this Special Civil Application the respondent no.1 may kindly be directed to maintain status quo in respect of the shop in question in the interest of justice.

C) This Honourable Court may kindly condone the delay of 5 years 8 months and 12 days by setting aside the judgment and order passed by the Learned Additional District Court, Dwarka on dated 16.06.2025;

D) The Honourable Court may kindly be called for the record of Civil Misc. Application (condone of delay) No. 49 of 2024 sot that the transparency is seen with the naked eyes to the satisfaction of the present petitioners;

E) Any other and further relief/s that may be deemed necessary expedient in the interest of justice may kindly be granted.”

SUBMISSIONS OF THE PETITIONERS

3. Mr. Thaker, learned advocate for the petitioners would submit that Appellate Court has taken a very hyper-technical approach while not condoning the delay occurred in filing regular civil appeal by the petitioners, which resulted into miscarriage of justice.

3.1 Mr. Thaker, learned advocate would argue as per the grounds set out in the petition. It is submitted that due to COVID-19 and subsequent death in the family, the petitioners could not approach the Appellate Court in time and as such, there was no mala fide intention on the part of petitioners not to file appeal within short period of time.

3.2 Mr. Thaker, learned advocate would submit that the Appellate Court has not properly appreciated the facts of the case; rather in a mechanical manner, adjudicated the impugned delay application. It is submitted that since there is more than one owner of the rented premises, it took some time to arrive at consensus between other co-owner to prefer an appeal which ultimately resulted into delay in filing the appeal. It is also submitted that son of the petitioner No.2 died due to corona on 12.04.2021 and due to such reason, petitioners could not in a good mental state to file an appeal.

3.3 Lastly, Mr. Thaker, learned advocate would submit that this Court may exercise its extraordinary powers in favour of the petitioners and condone the delay in filing the appeal in the interest of justice.

3.4 Making the above submissions, Mr. Thaker, learned advocate would request this Court to allow this petition.

SUBMISSIONS OF THE RESPONDENT

4. *Per contra*, Mr. Krishnan M. Ghavariya, learned advocate for the respondent has vehemently opposed this petition contenting *inter alia* that there is no cause, much less a sufficient cause, made out by the petitioners in filing the appeal after 7 years from passing of decree by Trial Court.

4.1 It is submitted that the judgment and decree was passed by Trial Court in the year 2017, whereas the appeal was preferred by the petitioners in the year 2024. It is submitted that petitioner No.1 herein is an advocate and despite such fact, the petitioners sat tight over the matter for more than 7 years, which shows sheer negligence on the part of the petitioners not to prefer an appeal without any justifiable reason.

4.2 Making the above submissions, Mr. Ghavariya, learned advocate for the respondent would request this Court to dismiss this petition.

5. No other and further submissions being made by the learned advocates appearing for the respective parties.

ANALYSIS AND REASONS

6. Having heard the learned advocates for the respective parties and

upon perusal of the impugned order, it appears that petitioners challenged the judgment and decree dated 15.03.2017 passed by Trial Court in Regular Civil Suit No. 63 of 2008 before the Appellate Court in the year 2024, whereby there was a delay of more than 7 years in filing such appeal, which was not condoned by the Appellate Court vide the impugned order.

7. Before proceeding further, I have called upon Mr. Thaker, learned advocate for the petitioners to supply a copy of the impugned delay application, whereby, this Court can re-appreciate the averments made in the delay application and, if it can satisfy that any sufficient cause is made out, then this Court can interfere with the impugned order. Surprisingly, Mr. Thaker, learned advocate, who also happens to be petitioner No.1 herein, responded to the Court that while adjudicating the matter, this Court only require to go through the impugned order. In light of such stance on behalf of the petitioners, this Court has confined its inquiry to the impugned order and not traveled beyond it.

8. It is an undisputed fact on record that the judgment and decree was passed by Trial Court on 15.03.2017 and for more than 7 years, such decree was not challenged by the petitioners-plaintiffs before the Appellate Court. After perusing the impugned order and taking note of

the fact that there is no sufficient cause made out, the Appellate Court has correctly not entertained the delay application. The Appellate Court has observed that since applicant / petitioner No.1 is a lawyer, he could have preferred the appeal alone by joining other co-plaintiffs as respondents if there was no consensus arrived at between the plaintiffs to prefer an appeal, but this cannot be a reason to delay in filing the appeal. According to me, no fault can be found with the Appellate Court.

9. So far as the unfortunate death of son of petitioner No.2 is concerned, that was happened on 12.04.2021, after about 4 years from the passing of the decree, and it has no direct bearing for causing delay in filing the appeal. Even after such death also, the petitioners took almost 3 years to prefer the appeal. Likewise, COVID-19 came in the year 2020, whereas the Trial Court's judgement/decreed passed in the year 2017.

9. Having considered the entire facts and circumstances of the case at hand, this Court is also of the view that due to sheer negligence on the part of petitioners, they could not prefer the appeal in time and, as such, without any justifiable reason, much less any sufficient cause, preferred the appeal after inordinate delay, i.e., after more than 7 years.

10. At this stage, it would be apt to refer to the following decisions of

the Hon'ble Apex Court where, in such type of cases, the Hon'ble Apex Court has categorically laid down law that in the case of long, inordinate, and gross delay, and where ever the negligence is observed on the part of the litigant to pursue the legal remedy, such conduct on the part of the litigant cannot be condoned even by imposing costs.

10.1 It would be first apt to refer to the decision of Hon'ble Apex Court of India in a case of ***Rajneesh Kumar & Anr V/S Ved Prakash*** reported in ***2024 (14) SCALE 406***, wherein held as under:

“[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)

10.2 It is apposite to refer to the decision of the Hon'ble Supreme Court of India in the case of ***K.B. Lal (Krishna Bahadur Lal) v. Gyanendra Pratap & Ors.***, reported in **2024 (4) Scale 759**, 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)

10.3 It is also profitable to refer to the decision of Hon'ble Apex 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 law 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, tantamounts to disregarding the statutory provision."

(emphasis supplied)

10.4 It is also not out of place to rely upon the decision of the Hon'ble Apex 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)

10.5 Even, in last year as well, the Hon’ble Apex Court in the case of ***Shivamma (DEAD) By Lrs Vs. Karnataka Housing Board & Ors. reported In 2025 INSC 1104***, in clear terms held that when 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 Apex 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)

11. In view of the aforesaid exposition of law laid down by the Hon'ble Apex Court, which stands as on date, and applying it to the case at hand, I am of the view that no case is made out by the petitioners for condonation of inordinate delay in filing their regular appeal. Having not found any gross error of law committed by the Appellate Court while rejecting the impugned delay application, this Court is not inclined to entertain this petition.

12. In view of the forgoing conclusion and reasons, the present petition is found devoid of any merit and accordingly, it is dismissed. Notice is discharged. No order as to costs.

Lalji Desai

(MAULIK J.SHELAT,J)