IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CIVIL APPLICATION (FOR CONDONATION OF DELAY) NO. 4425 of 2025
In
F/FIRST APPEAL/603/2025

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POONAMBEN W/O ASHOKBHAI PATEL (LHS OF LATE ASHOKBHAI MANUBHAI PATEL) & ORS.
Versus
LHS OF LATE BABARBHAI SHANKARBHAI SOLANKI'S & ORS.
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Appearance:
MR VEDANT D GAIKWAD(10444) for the Applicant(s) No. 1,2,3
DS AFF.NOT FILED (R) for the Respondent(s) No. 2
RULE SERVED BY DS for the Respondent(s) No. 1.1.1,1.1.2,1.2,3,4,5,6,7,8
RUSHABH H SHAH(7594) for the Respondent(s) No. 10,11,12,9
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CORAM: **HONOURABLE MR. JUSTICE ILESH J. VORA**
and
HONOURABLE MR. JUSTICE R. T. VACHHANI

Date : 30/06/2026

ORAL ORDER
(PER : HONOURABLE MR. JUSTICE ILESH J. VORA)

1. By way of this application, the applicants seek condonation of delay caused in preferring the First Appeal.

2. Brief facts leading to file this application are that:-

(i) The applicants being legal heirs of Ashok Manubhai Patel had filed Civil Suit No. 234 of 2020 in the Court of Civil Judge at Vadodara for declaration, permanent injunction, cancellation of registered sale deed and specific performance of the contract with respect to the suit property, against the defendants – respondents herein.

(ii) The suit was filed through power of attorney holder. The advocate Mr. I. Y. Patel was given an amount of Court Fees of Rs.1,12,500/-. After filing of the suit, the advocate concerned neglected in making payment of court fees. The matter was referred to Court Fees Inspector. He had directed to pay court fees within stipulated time. The plaintiff did not have paid the Court fees till 28.04.2022. The respondents defendants moved an application before the trial Court under Order 7 Rule 11 (c) of the Code of Civil Procedure, for rejection of plaint, as the plaintiffs failed to submit requisite court fees. The trial Court on the same day, i.e. on 11.05.2022 served the notice upon the advocate concerned and in the second session, in absence of plaintiffs and their pleader, the plaint came to be dismissed under Order 7 Rule 11 of CPC.

(iii) The applicants herein came to know later on about the dismissal of the suit and upon advise, they had preferred First Appeal before the District Court, Vadodara, along with delay condonation application, as there was delay of about 400 days in preferring the First Appeal. The District Court, Vadodara was pleased to dismiss the Delay Condonation Application No. 189 of 2023 by its order dated 09.05.2024, observing that, the valuation of the property is about Rs.5 crores, which is beyond the jurisdiction of the district Court and on this technical issue, the application was not entertained.

(iv) The applicants upon advise, filed First Appeal before this Court along with an application for condonation of delay, inter-alia, stating that, there was professional misconduct on the part of concerned Advocate, as despite of payment of court fees to him, he did not

purchase the requisite stamps, as a result, the suit came to be dismissed by the Court; that, they were not aware about the passing of the order by the court concerned and thereafter, preferred a first appeal before the District Court in a good faith, however, on technical issue of jurisdiction, the time was consumed in pursuing the litigation and therefore, the first part of delay i.e. from filing of the application till decision of the District Court, required to be excluded. So far as, delay caused in preferring First Appeal before High Court is concerned, it is stated that, the time was consumed in obtaining the necessary certified copies from the concerned court as well as in arranging advocate fees. Thus, having regard to the peculiar facts of the case, it is submitted that, there was delay of 10 months in preferring the First Appeal before this Court and having regard to the fault on the part of the advocate, it cannot be said that, the delay was deliberate and throughout the applicants were negligent in pursing the litigation.

3. We have heard learned counsel Mr. Vedant D. Gaikwad and Mr. Rushabh Shah for the respective parties.

4. Mr. Gaikwad, learned advocate has submitted that, from 11.05.2022 to 09.08.2024, the time spent for pursing the remedy before the wrong forum can be required to be excluded as per Section 14 of the Limitation Act. The second part of the delay of 10 months can be liberally construed because, the time spent in collecting funds as well as obtaining certified copies etc. In such circumstances, he would urge that, the applicants are innocent and they were unaware about the intention of the concerned advocate, who failed to submit

court fees despite of full payment made to him. The trial Court while dismissing the plaint, did not have served the notice upon the applicants. The notice was served upon the advocate concerned, who was at fault and on the same day, in absence of applicants, the plaint came to be dismissed. Thus, on merits, there are chances in succeeding the Appeal and therefore, the reasons set forth for the delay are sufficient to condone and same may be liberally construed to do substantial justice.

5. On the other hand, opposing the contentions, learned counsel Mr. Rushabh Shah appearing for respondent nos. 9 to 12, has submitted that, in the facts of the present case, the applicants found to be negligent and they have not acted diligently and therefore, the grounds averred in the application are not sufficient and convincing to condone the delay. By relying the judgment of **Rajneesh Kumar and Anr Vs. Ved Prakash (2024 SCC On-line SC 3380)**, it is submitted that the applicants were aware about the conduct of the advocate and despite of this, they failed to submit requisite court fees and therefore, carelessness of the advocate, cannot be a ground to condone the delay. In such circumstances, Mr. Shah, by referring the contentions raised in his written submission, has stated that, the application has no merits and same may be dismissed with costs.

6. We have heard at length learned counsel for the respective parties and perused the impugned order and other case records.

7. In the facts of the present case, the suit being Civil Suit No. 234 of 2020 filed through power of attorney holder and counsel Mr. Patel,

who had institute the suit, remained careless in submitting the requisite court fees despite of full payment being made to him. Before the trial Court, while dismissing the plaint for insufficient court fees, the notice upon the advocate was served and on the same day, the plaint came to be dismissed. Being aggrieved and dissatisfied with the dismissal of the plaint, the appeal before the District Court along with Delay Condonation Application was preferred. Thus, so far part one is concerned, in our opinion, the applicants have chosen a wrong forum for preferring the First Appeal and therefore, whatever delay caused would required to be excluded as per Section 14 of the Limitation Act.

8. So far as delay caused in preferring Appeal before this Court is concerned, we proceed to examine the cause shown by the applicants regarding filing of present application with the delay of 10 months. The Supreme Court and this High Court, has time and again held that, in considering the application for condonation of delay, court ought to construe it liberally and for condonation of delay, the length of delay is no matter, the acceptability of the explanation is the only criteria. In the facts of the present case, from the date of filing of the suit, the applicants made full payment of court fees to his advocate. The advocate was careless and did not inform the applicants about the non-payment of court fees. The trial Court should have served the notice upon the applicants herein. The service to the advocate, would not fruitful in the present case, because, he did not intend to pay the court fees. The plaint came to be dismissed on the same day. In such circumstances, throughout the

proceedings, the applicants were acted in good faith. In such circumstances, there was no lethargic approach on the part of the applicants in pursing the litigation. Thus, in the background of the peculiar facts, as discussed hereinabove, the applicants should be given an opportunity to contest the matter on merits.

9. For the reasons recorded, this Court is of the view that delay caused in preferring First Appeal is hereby condoned. Accordingly, application is allowed. No order as to costs.

(ILESH J. VORA,J)

(R. T. VACHHANI, J)

P.S. JOSHI

Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: PALLAV SUBHASHCHANDRA JOSHI(HC00177), Principal Pvt. Secretary, at High Court of Gujarat on 30/06/2026 14:48:41