

**(2023) 08 GUJ CK 0027**

**In the Gujarat High Court**

**Case No :** R/Civil Application No. 758 Of 2023 In F/First Appeal No. 10433 Of 2023

Allaudin Misribhai Sipai (Kaji)

APPELLANT

Vs

Thakor Viramji Ajmalji

RESPONDENT

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**Date of Decision :** 07-08-2023

**Acts Referred:**

Limitation Act, 1963 — Section 5

**Citation :** (2023) 08 GUJ CK 0027

**Hon'ble Judges :** Gita Gopi, J

**Bench :** Single Bench

**Advocate :** Yogendra Thakore

**Final Decision :** Allowed

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## **Judgement**

Gita Gopi, J

1. This Application has been filed praying for condonation of delay of 311 days in filing of the above First Appeal.

2. It is submitted that the present matter is out of a group of matters arising out of the same accident. It is further submitted that the applicant was physically disabled because of the accident, had to spend lot of money for various medical expenses and had to make provisions for Court fees and other expenses. All these factors have contributed to the delay.

3. In the case of Collector, Land Acquisition, Anantnag and Another v. Mst. Katiji and Others reported in AIR 1987 SC 1353 it has been observed as under :-

"3. The legislature has conferred the power to condone delay by enacting Section 5 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 meaning-ful 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:-

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."
4. Considering the submissions advanced and in view of the facts and circumstances of the case and the ratio laid down in the above judgment, the present application is allowed and the delay of 311 days in filing of the First Appeal is condoned.
5. Each and every delay is not required to be explained but it is required that the matters are decided on merits. Though the delay may not be deliberate but the delay causes unnecessary burden on the Insurance Company to pay the interest. The grounds shown are sufficient for condonation of delay, however, it would be open for the applicant to urge about the interest for the delayed period during the course of the final hearing of the Appeal.