

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CIVIL APPLICATION (FOR CONDONATION OF DELAY) NO. 5657 of  
2025****In F/FIRST APPEAL/33155/2025****With  
R/CIVIL APPLICATION NO. 5665 of 2025****In  
F/FIRST APPEAL NO. 33181 of 2025****With  
R/CIVIL APPLICATION NO. 5666 of 2025****In  
F/FIRST APPEAL NO. 33161 of 2025****With  
R/CIVIL APPLICATION NO. 5667 of 2025****In  
F/FIRST APPEAL NO. 33137 of 2025****With  
R/CIVIL APPLICATION NO. 5691 of 2025****In  
F/FIRST APPEAL NO. 33169 of 2025****With  
R/CIVIL APPLICATION NO. 5693 of 2025****In  
F/FIRST APPEAL NO. 33177 of 2025****With  
R/CIVIL APPLICATION NO. 5703 of 2025****In  
F/FIRST APPEAL NO. 33151 of 2025****With  
R/CIVIL APPLICATION NO. 5704 of 2025****In  
F/FIRST APPEAL NO. 33147 of 2025****With  
R/CIVIL APPLICATION NO. 5705 of 2025****In  
F/FIRST APPEAL NO. 33141 of 2025****FOR APPROVAL AND SIGNATURE:****HONOURABLE MRS. JUSTICE M. K. THAKKER**

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Approved for Reporting	Yes	No
	yes	

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SUPERINTENDING ARCHAEOLOGIST

Versus

HIRABHAI LAXMANBHAI SINCE DECD. THORUGH HEIR & ORS.

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Appearance:

MR ANKIT SHAH(6371) for the Applicant(s) No. 1

MS HIMANI SHAH, ASST. GOVERNMENT PLEADER for the Respondent(s)  
No. 2

JIGNESHKUMAR M NAYAK(8558) for the Respondent(s) No. 1.1 except Civil  
Application No.5667 of 2025 in F/First Appeal No. 33137 Of 2025

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CORAM:**HONOURABLE MRS. JUSTICE M. K. THAKKER**

**Date : 16/01/2026**

### **COMMON ORAL JUDGMENT**

- 1** Since the issue raised in the these applications are similar, they are being decided by a common judgment. The facts of Civil Application No.5657 of 2025 are taken for the purpose of adjudication.
- 2** The present application is filed seeking condonation of delay of 718 days in filing the First Appeal challenging the judgment and decree dated 31.07.2023 passed by the learned Principal Senior Civil Judge, Bhachau, District Kutch, in LAR No.20 of 2017 with allied matters.
- 3** Heard the learned advocate Mr.Ankit Shah for the applicant and learned advocate Mr.Jigneshkumar Nayak and learned AGP for opponents.



4 Learned advocate Mr. Ankit Shah for the appellant submits that the impugned judgment and decree were passed on 31.07.2023. The certified copy of the impugned judgment and decree was applied for on 23.08.2023 and was delivered on the same day. Thereafter, the file was forwarded to the office of the applicant and subsequently sent to the panel advocate for obtaining his legal opinion. Upon receipt of such opinion, the matter was forwarded to the higher authorities and, during the process of obtaining the requisite administrative approval, a delay of 718 days occurred in filing the appeal.

4.1 It is further submitted by learned advocate Mr. Shah that, as per the mandatory Government procedure, the matter was required to be placed before the competent higher authority, namely the Director General, Archaeological Survey of India, New Delhi, for obtaining administrative approval to challenge the impugned judgment and to seek stay of its operation. The delay occurred due to administrative reasons in obtaining the said approval and, therefore, the same deserves to be condoned and the present application deserves to be allowed.



5 Per contra, learned advocate Mr. Jigneshkumar Nayak appearing for the opponent submits that, challenging the impugned judgment and decree dated 31.07.2023, the First Appeal came to be filed before this Court on 16.10.2025. It is submitted that the Execution Application was filed before the Bhachau Court being LAR No.9 of 2023, which was thereafter transferred to the Court of the learned Principal Senior Civil Judge, Rajkot. Notices were issued by the executing Court to the applicant authority, pursuant to which an assurance was given to deposit the awarded amount on or before 21.04.2025. However, instead of depositing the awarded amount, the present First Appeal came to be filed along with an application for condonation of delay.

5.1 It is further submitted by the learned advocate Mr.Nayak that the learned Principal Senior Civil Judge, Bhachau issued a Japti Warrant on 21.04.2025, which was served upon the applicant on 14.05.2025, where also the applicant authority gave an undertaking to deposit the outstanding claim amount. Despite having complete knowledge of the execution proceedings, the applicant has failed to disclose these material facts either in the First Appeal or in the application seeking condonation of delay.

5.2 It is submitted that by the learned advocate Mr. Nayak that the applicant had addressed various communications to the Director General, Archaeological Survey of India, Dharohar Bhavan, New Delhi, dated 19.06.2024, 24.07.2024, 07.08.2024, and 06.09.2024. However, despite repeated opportunities granted by the executing Court and despite assurances given by the applicant authority, the applicant has failed to comply with the same by depositing the awarded amount.

5.3 It is therefore submitted by the learned advocate Mr. Nayak that the present First Appeal has been filed solely with a view to delay the execution proceedings and, in the absence of any sufficient and bona fide explanation for the inordinate delay, the application for condonation of delay as well as the First Appeal deserve to be dismissed.

5.4 Learned advocate Mr. Nayak has relied upon the decisions of the Apex Court rendered in the cases of **State of Madhya Pradesh v. Ramkumar Choudhary**, reported in **(2025) 2 GLR 987**, and **Thirunagalingam v. Lingeswaran and**



**Another**, reported in **(2025) 6 SCR 253**, and has submitted that, in the absence of any satisfactory explanation, the application seeking condonation of delay deserves to be rejected.

6 Having considered the arguments advanced by the learned advocates for the respective parties and on perusal of the record, including the reasons assigned in the application seeking condonation of delay, it emerges that the first appeal has been filed by the applicant-authority challenging the judgment and award dated 31.07.2023 passed in LAR No.15 of 2017 with allied matters. In the said proceedings, the learned Reference Court, relying upon the sale deed executed by the Gujarat Tourism Department produced at Exhibit 46, determined the market value of the acquired land at the rate of Rs.9.57 per square meter.

6.1 It is observed by the learned Reference Court that Exhibit 46 pertains to Revenue Survey No.264/1, whereas the lands under acquisition pertain to Revenue Survey Nos.204, 250, 249/1, 251, 252, 244/1, 244/3 paiki, 253 paiki, 254, 276 paiki, 249/2, 248, 257 and 245, all situated in the same village, namely Dholavira.

7 It emerges from the record that the execution

proceedings were initiated by filing Execution Application No.9 of 2023 before the Principal Senior Civil Judge, Bhachau, District Kutch, which was thereafter transferred under Order XXI Rule 5 of the Code of Civil Procedure to the Court of the learned Principal Senior Civil Judge, Rajkot. The present applicant-authority appeared before the Executing Court and filed several applications seeking adjournments, each time assuring that the awarded amount would be deposited.

7.1 It further transpires from the order dated 21.04.2025 that, despite a clear warning regarding issuance of an attachment warrant, and for a period of nearly one and a half years, no effective steps were taken by the applicant-authority to deposit the amount awarded by the learned Reference Court, except repeatedly seeking adjournments. The record also reflects that a notice dated 18.01.2025 was issued to the Superintendent of Archaeology directing deposit of the awarded amount, however, the applicant-authority failed to comply with the same.

7.2 Ultimately, an attachment warrant came to be issued by the Executing Court. However, on an assurance given by the applicant-authority on



11.06.2025 to deposit the awarded amount within a period of 15 days, the attachment was not effected. Thereafter, the present First Appeal came to be filed along with the application seeking condonation of delay.

8 In the application, the applicant had reiterated the following grounds explaining the delay:

“3.Applicant respectfully states that the impugned judgment and decree is dated 31.07.2023. The certified copy thereof was applied on 23.08.2023 and the same was also delivered on the same day. It is respectfully submitted that thereafter, the same was sent to the office of the applicant. That thereafter, the applicant had sent the same to its panel advocate for his opinion. After receiving such opinion from the panel advocate, the matter was then forwarded to the higher-ups in the matter for their consideration and approval, along with the opinion of the panel advocate. It is respectfully submitted that the approval of the same has been received only recently and therefore, immediately, the applicant had contacted its advocate to challenge the judgement and decree passed by the learned trial court. However, the said process has taken some time and had caused a delay of 718 days in preferring the present First Appeal, which is neither intentional nor deliberate nor the applicant has gained anything therefrom. Under the circumstances, the delay of 718 days caused in preferring the present First Appeal deserves to be condoned, in the interest of justice.”

8.1 As the grounds were found to be insufficient, this Court issued directions to file an additional affidavit, which has thereafter been filed raising





the following contentions:

“3. That immediately after receipt of the judgment, the matter was examined at the Rajkot Circle level, and considering the substantial financial implications and public importance involved, the records were processed for obtaining legal opinion from the Government Standing Counsel.

4. That accordingly, during October 2023, the papers along with the certified copy of the judgment were forwarded for legal opinion, which was received thereafter, recommending filing of an appeal before this Hon'ble Court.

5. That upon receipt of the legal opinion, as per mandatory Government procedure, the matter was required to be placed before the higher authorities, including the Director (Monuments) and the Director General, Archaeological Survey of India, New Delhi, for obtaining necessary administrative approval to challenge the judgment and to seek stay of its operation.

6. That the file thereafter moved through various administrative channels at the Circle Office, Regional level, and Headquarters at New Delhi, involving scrutiny of records, assessment of financial burden, and examination at multiple levels, which consumed considerable time due to official procedures and workload.

7. That finally, during July-August 2025, approval to file the appeal along with stay and delay-condonation applications was accorded by the competent authority, i.e., the Director General, Archaeological Survey of India. Copy of all the letters for approval from high authority is annexed hereto and marked as Annexure - A.

8. That thereafter, the draft appeal papers, stay application and application for condonation of delay were finalized in coordination with the learned Government Counsel, and necessary steps were taken for payment of court fees and stamp duty, compilation of records, annexures, and administrative formalities.

9. That immediately upon completion of the aforesaid formalities, the present appeal along with connected applications has been filed before this Hon'ble Court in August 2025, without any further avoidable delay.

10. That it is respectfully submitted that the Appellant is a Government Department, and the delay has occurred solely due to unavoidable administrative processes and statutory approvals and not due to negligence or lack of bona fides.”

9 Considering the grounds urged in support of the application, this Court finds that they are not only insufficient but wholly inadequate and indicative of a negligent and mala fide intent to delay the execution proceedings. Such grounds cannot be accepted merely on the pretext of the so-called special status claimed by the applicant authority. Despite the fact that valuable lands were acquired by the applicant authority more than 20 years ago, the claimants have been deprived of receiving reasonable compensation till date.

9.1 It is contended that no prejudice would be caused to the opposite party if the delay is



condoned. However, as observed by the Apex Court in the case of **State of Madhya Pradesh (supra)**, the concept of rendering substantial justice does not mean causing prejudice to the opposite party. The applicant has failed to demonstrate that it was reasonably diligent in prosecuting the matter, and this vital test for condonation of delay having not been satisfied, the delay cannot be condoned as a matter of generosity.

9.2 The Apex Court has further observed in the aforesaid decision that the Court is required to examine what prevented the party from filing the appeal between the first day and the last day of limitation. Though a party is entitled to avail the entire period of limitation, once the limitation expires and sufficient cause is pleaded, such cause must disclose that due to an event or circumstance arising before the expiry of limitation, it was not possible to file the appeal within time. Any event or circumstance arising after the expiry of limitation cannot constitute a sufficient cause.

9.3 In the present case, the explanation that the delay occurred due to mandatory governmental

procedure of obtaining administrative approval from higher authorities does not inspire confidence and fails to constitute a sufficient cause in the eyes of law.

10 If the communication addressed by the Superintendent of Archaeology, which forms part of the present application, is referred, which suggests the following aspects:

“As per telephonic instruction of the Director General, ASI, New Delhi, a senior Central Government Counsel of Gujarat High Court, Ahmedabad Shree Ankit Shah (Enrolment No D/845/2007) was contacted and all related judgements and records were provided. As per instruction the and Central Government Counsel of was requested to file an appeal in Hon'ble High Court, Ahmedabad against the order of Civil Judge, Bhachau, in the matter of L.A.R. No. 15 of 2017 and group L.A.R. Nos. 15/16 of 2017 19 of 2017 to 21 of 2017, and 1 of 2018 to 5 of 2018.

However, the Central Government Counsel has given his legal opinion against filling appeal and mentioned that this is not a fit case for preferring appeal against the judgement and decree or Learned trial Court and any attempt to prefer an appeal is likely to be dismissed at the threshold. Copy of legal opinion provided by Central Government Counsel is enclosed along with the orders of his registration as Central Government Counsel.

Accordingly, it is requested that suitable decision in the matter may please be taken and necessary direction may also be given in the matter of release compensation to the land owners as directed by Hon'ble court.



Submitted Please.”

11 It emerges that despite the Superintendent of Archaeology having advised compliance with the judgment and release of compensation to the landowners, the present appeal has been filed along with an application for condonation of delay, that too without offering any sufficient explanation.

12 This Court has referred the decision rendered by the Apex Court in the case of **Thirunagalingam (supra)** wherein the Apex Court has held as under:

“31. It is a well-settled law that while considering the plea for condonation of delay, the first and foremost duty of the court is to first ascertain the bona fides of the explanation offered by the party seeking condonation rather than starting with the merits of the main matter. Only when sufficient cause or reasons given for the delay by the litigant and the opposition of the other side is equally balanced or stand on equal footing, the court may consider the merits of the main matter for the purpose of condoning the delay.

32. Further, this Court has repeatedly emphasised in several cases that delay should not be condoned merely as an act of generosity. The pursuit of substantial justice must not come at the cost of causing prejudice to the opposing party. In the present case, the respondents/defendants have failed to demonstrate reasonable grounds of delay in pursuing the matter, and this crucial



requirement for condoning the delay remains unmet.

33. Therefore, in the case at hand, once it has been established that the reasons provided for condoning the delay in the application filed are not sufficient, we are not inclined to go into the merits of the contentions raised by the learned counsel of Respondents regarding Section 14 of the Limitation Act, 1963.”

13 For the foregoing reasons, and in view of the suppression of material facts regarding the filing of the execution application and the assurances given by the applicant authority, this Court is of the opinion that the application deserves to be rejected. Accordingly, the application is rejected with costs of ₹1,00,000/- collectively. The said costs shall be recovered from the erring officer(s) responsible for such suppression and lapse. The costs shall be deposited within a period of three weeks before this Court and shall be remitted to the learned Executing Court, which shall disburse the same in favour of the original claimants after due verification.

**(M. K. THAKKER,J)**

M.M.MIRZA