

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CIVIL APPLICATION (FOR CONDONATION OF DELAY) NO. 4637 of
2024****In F/FIRST APPEAL/10192/2024**

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REGIONAL DIRECTOR, THE EMPLOYEES STATE INSURANCE
CORPORATION

Versus

M/S C. H. ENGINEERING COMPANY & ANR.

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Appearance:

MR AV NAIR(5602) for the Applicant

SERVED BY PUBLICATION IN NEWS for the Respondent(s) No. 1,2

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CORAM:HONOURABLE MR. JUSTICE J. C. DOSHI

Date : 24/08/2026

JUDGMENT

1. Heard learned advocate Mr. AV Nair for the applicant.
2. The present application, invoking Section 5 of the Limitation Act, 1963, seeks condonation of an inordinate delay of **669** days in preferring the captioned First Appeal filed u/s 82 of the ESI Act against the impugned order dated 28.3.2022 passed by the learned ESI Court at Ahmedabad in ESI Application No.60 of 2007.
3. Learned advocate appearing for the applicant in order to explain the delay, would mainly argue that the ESI Court has partly allowed the impugned ESI application without being mindful of the jurisdiction vested upon it i/s 75 of the ESI Act.



He would further submit that the ESI Court has erred in law in exercising the jurisdiction u/s 75 of the Act in interfering with the order of determination of contribution payable by the respondent u/s 45A for the default period in spite of holding the issue No.3 against the respondent herein. He would further submit that the ESI Court has materially erred in fact and law by interfering with the order passed u/s 45A of the Act only on the ground of non-mentioning of head under which the ESI contribution was assessed in C-19 notices for the default period 31/3/1969 to 1983 rendering the impugned judgment and award preserve and not tenable in law.

3.1 Merely upon above submission, learned advocate for the applicant prays to allow this application by condoning the delay and to register the First Appeal.

4. Though served, none appears for the respondents.

5. Having heard learned advocate for the applicant and applying thoughtful consideration to the present application, what could be noticeable that except para 2 of the application, no other paragraphs demonstrate any reason much less sufficient reason to condone the delay. Para 2 reads as under:-

"2. It is most humbly submitted that the impugned Judgment and award was passed on 28/03/2022, but the same was brought to the knowledge of the office of the Applicant by the establishment only on 29/04/2022 by serving the copy of the Caveat filed before the Hon'ble High Court. Thereafter, an Assisting officer was allotted the file to be put up



before the Competent Authority, with her inputs on the matter vide office note dated 25/05/2022, but unfortunately the said file could not be processed at her end due to her transfer on 21/06/2022. Thereafter, as the original file of the subject matter, to verify the findings of the Hon'ble ESI Court, was not traceable, another Assistant was appointed, who could put up his noting and place the available file before the competent authority only on 21/09/2022, who was pleased to intimate the concerned insurance branch to review the head and admissibility of contribution in line of the judgment for further decision on 13/10/2022, which was replied by the Revenue Branch and the Revenue Recovery Cell only on 14/11/2022 and 29/11/2022. Meanwhile, the Branch officer of the Legal Branch got transferred in the month of October-2022, and upon seeking legal opinion from the Panel advocate for the further course of available action, the same was received in the month of November-2022. Thereafter, the second opinion from a Senior Panel Advocate was sought vide communication dated 21/12/2023 and reminders dated 10/01/2024 and 17/01/2024, to arrive at a decision on further course of action, which was received only on 23/01/2024. Meanwhile, the Competent Authorities i.e. Additional Commissioner and Regional Director, who were to decide on sanction to file the Appeal, also got transferred in the Month of March-2023, and it was only on 04/03/2024, the competent Authority could accorded the sanction to file the appeal, after perusal of the file and the remarks from the relevant sections of the office. Thereafter, the office of the applicant had applied for the certified copy of the same on 18/03/2024, and the same was ready for dispatch on 19/03/2024, and thereafter the case papers were forwarded to the Panel Advocate for the Applicant, and accordingly, the above-captioned appeal has been filed after the delay of 669 days."

6. As far as delay has been sought to be condoned, under Section 5 of the Limitation Act, 1963, let refer section 5 as



under:-

“5. Extension of prescribed period in certain cases.—

Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 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.

Explanation.—The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.”

7. The applicant was obliged to satisfactorily demonstrate and explicate the colossal delay and to convince the Court that sufficient cause existed for not preferring the appeal / application or moving the requisite application within the statutorily prescribed period. Ordinarily, the Courts adopt a liberal approach while considering applications for condonation of delay under Section 5 of the Limitation Act, provided that the delay is duly attributable to sufficient cause. Delay cannot be condoned by a mere invocation of “liberal approach,” “justice-oriented approach,” or “substantial justice.” These oft-quoted expressions cannot be deployed to jettison or emasculate the substantive law of limitation.

8. Rule of limitation is based upon principles of sound public policy and principles of equity. Indeed expression



'sufficient cause' should receive liberal construction so as to advance substantial justice. This proposition comes into picture when no negligence or inaction or want of bona fide is imputable to party seeking condonation of delay. Whether explanation furnished would constitute 'sufficient cause' or not will depend on facts of each case and there cannot be straitjacket formula for accepting or rejecting explanation furnished for delay caused in taking steps. While considering the matter, the Court is also required to consider all the fact that why party has not taken steps within time prescribed. The Court should not lose sight of the fact that by not taking steps within the time prescribed time, valuable right has accrued to other party which should not lightly be defeated by condoning delay in routine like manner.

9. Theory of liberal approach should be adjudicated on theory of due diligence. In the present case, length of delay is 669 days. It is quite long delay and on going through application as well as arguments, it remains unexplained. They are propelled by the applicant, it does not seem to be germane one and none of the reasons prevented the applicant from filing FA within time period. It is to be remembered that pleadings and reasons are not backed out by any documentary evidence.

10. According to this Court, the applicant has failed to establish any sufficient reasons which has prevented them to file FA within stipulated time period.



11. Recently, in the case of **State of Odisha & Ors. Vs Managing Committee of Namatara Girls High Schools 2026 INSC 148**, the Hon'ble Supreme Court, after referring to various authorities on the subject matter in paras 17 to 21 are held as under :-

"17. Indeed, one of us [Dipankar Datta] in Sheo Raj Singh v. Union of India 14 authoring the judgment for a coordinate Bench adopted the view taken in Katiji (supra), Ramegowda (supra) and a host of other decisions following the same while not interfering with an order of condonation of delay passed by the relevant high court. However, it was observed that a distinction ought to be drawn between an 'explanation' and an 'excuse' that is proffered as cause for condonation of delay. It was also emphasized that a different approach has to be adopted while this Court is considering an application for condonation of delay in presentation of an appeal/application and when it sits in appeal over a discretionary order of the high court granting the prayer for condonation of delay. In the case of the former, whether to condone or not would be the only question whereas in the latter, whether there has been proper exercise of discretion in favour of grant of the prayer for condonation has to be examined.

18. However, what perhaps remained unnoticed in any of the decisions post Katiji (supra) and Ramegowda (supra) adopting a liberal approach is the exasperation and consequent lament expressed by none other than Hon'ble M.N. Venkatachaliah, CJI. in course of authoring a brief order in Commissioner of Wealth Tax, Bombay v. Amateur Riders Club, Bombays and admonishing officers of the "revenue" in not acting with promptitude. This order was made within six years of the decision in Ramegowda (supra). We can do no better than quoting the same in its entirety hereunder:



1. We have heard Shri S.C. Manchanda, learned senior counsel for the Revenue.

2. This special leave petition filed on November 16, 1993 is delayed by 264 days. For quite some time in the past, this Court has been making observations as to the grave prejudice caused to public interest by appeals brought on behalf of the Government being lost on the point of limitation, Such observations have been made for over a few years in the past. But there seems to be no conspicuous improvement as is apparerit in the present petition which is flied in November 1993. The explanation for the delay, had better be set out In petitioner's own words:

"(g) The Advocate-on-Record got the special leave petition drafted from the drafting Advocate and sent the same for approval to the Board on June 24, 1993 along with the case file.

*(h) The Board returned the case file to the Advocate-on-Record on July 9, 1993 who re-
sent the same to the Board on September 20, 1993 requesting that draft SLP was not approved. by the Board. The Board after approving the draft SLP sent this file to CAS on October 1, 1993."*

3. This explanation is incapable of furnishing a judicially acceptable ground for condonation of delay. After the earlier observations of this Court made in several cases in the past, we hoped that the matters might Improve. There seems to be no visible support for this optimism, There is a point beyond which even the courts cannot help a litigant even if the litigant is Government which is itself under the shackles of bureaucratic indifference. Having regard to the law of limitation which binds everybody, we cannot find any way of granting relief. It is true that Government should not be treated as any other private litigant as, indeed,

in the case of the former the decisions to

19. Reading Ramegowda (supra) and Amateur Riders (supra), one after the other, leaves none in doubt that it did not take much time for this Court to lose hope. It is absolutely clear that the law was laid down in Ramegowda (supra), following Katiji (supra), with much optimism that matters would improve. Their Lordships, however, found no visible support for such optimism and the Court's patience having been tested to the extreme limit, held that there is a point beyond which even the courts cannot help a litigant even if the litigant labouring under the shackles of bureaucratic indifference is the Government.

20. We have found the State of Odisha to be utterly lethargic, tardy and indolent not only before the High Court but also before this Court. Notwithstanding that its appeal was dismissed as time-barred by the High Court, this Court has been approached by the State of Odisha four months after expiry of the period of limitation.

21. Condonation of delay cannot be claimed as a matter of right. It is entirely the discretion of the Court whether or not to condone delay. Despite all the latitude that is shown to a "State", we are of the clear opinion that the cause sought to be shown here by the State of Odisha is not an explanation but a lame excuse. No case for exercise of discretion has been set up."

12. Thus in the facts and in circumstances, this Court is of the opinion that applicant was not diligent in availing remedy of appeal / application. The averments made in the application seeking condonation of delay in filing application do not inspire any acceptable cause much less sufficient cause to exercise discretion in its favour.



13. Recently, the Hon'ble Apex Court in case of **Hamumatmal (Hanmat Vibhag Jangal Kamdar) Sahkari Mandli Vs. District Registrar, Sahkari Mandli & Ors. in Special Leave to Appeal No.7590 of 2026**, refused to condone the delay of 412 days.

14. In view of the aforesaid discussion, and upon a meticulous application of the ratio *decidendi* adverted to hereinabove, this Court finds that, in absence whereof, the very foundation of the allegations crumbles, there is no cogent or credible explanation forthcoming for the inordinate and colossal delay of **669 days**. The application, being *sans* merits, inexorably merits dismissal and is, accordingly, **DISMISSED**.

15. Consequently, the prayer for registration of the First Appeal also stands rejected.

16. Consequently, CA/s, if any, does not survive and stands disposed of accordingly.

SHEKHAR P. BARVE

(J. C. DOSHI,J)