

**HIGH COURT OF GUJARAT (D.B.)**

**PUNIT EDUCATION TRUST**

*Versus*

**PROJECT OFFICER AND TALUKA DEVELOPMENT OFFICER & ORS**

**Date of Decision:** 04 May 2012

**Citation:** 2012 LawSuit(Guj) 292

**Hon'ble Judges:** [A L Dave](#), [J B Pardiwala](#)

**Case Type:** Civil Application

**Case No:** 10381 of 2011

**Final Decision:** Application dismissed

**Advocates:** [R C Jani](#)

**J. B. Pardiwala, J.**

**[1]** This is an application for condonation of delay of 154 days at the instance of applicant original writ petitioner in preferring Letters Patent Appeal against judgment and order passed by the learned Single Judge dated 29.03.2011 and thereby learned Single Judge disposed of Special Civil Application No.15 of 1997 permitting the Counsel appearing for the petitioner to withdraw the writ petition unconditionally upon request made by learned senior advocate for the original writ petitioner and learned Single Judge, accordingly, dismissed the petition as withdrawn and ordered that ad-interim relief granted earlier would stand vacated.

**[2]** The reason or sufficient cause, which has been assigned in the application for condonation of delay in preferring appeal, is that the applicant original writ petitioner learnt about the disposal of the writ petition only when the authority called upon the applicant to show cause as to why they should not proceed further pursuant to the notice dated 19.12.1996, the stage, at which, perhaps, writ petition was preferred and relief was obtained against such a notice.

**[3]** Ordinarily, we would have condoned the delay. However, in the present case, what we find is that the main petition came to the withdrawn unconditionally by the learned Senior Counsel appearing for the applicant original writ petitioner. Upon request made

by the Counsel for the applicant, permission to withdraw the petition was granted unconditionally and accordingly, the ad-interim relief also stood vacated.

**[4]** We have gone through the memo of the Letters Patent Appeal. From the memo of the Letters Patent Appeal, we do not find as to under what circumstances, the petition was withdrawn. The applicant original writ petitioner has not made it clear as to whether he inquired with his Counsel as to under what circumstances, he sought permission to withdraw the petition, and, whether the same was withdrawn after making submissions on merits or without making any submission on merits. We do not find anything in the memo, which would suggest that after the order came to be passed by learned Single Judge, the applicant inquired in this regard with his counsel and if 'yes', what was the reply of the counsel or what was the explanation of the counsel. If, at all, the applicant is aggrieved by the order passed by learned Single Judge in granting the request of his Counsel to withdraw the petition and if such were not the instructions given by the applicant to his Counsel, then in that case, he could have moved an application for review or recall of the order on the ground that the Counsel was not authorised in any manner to withdraw the petition unconditionally.

**[5]** We do find the reasons assigned by the applicant in not preferring the appeal within the period of limitation convincing. Delay cannot be condoned on mere asking, but, a genuine sufficient cause must be made out or assigned by the applicant. In the present case, we do not find any sufficient cause assigned by the applicant praying for condonation of delay except drawing the entire blame on the Counsel.

**[6]** In the aforesaid view of the matter, we are left with no other option but to reject this application for condonation of delay. The application is, accordingly, rejected. However, there shall be no order as to costs.