

(2005) 09 GUJ CK 0083

In the Gujarat High Court

Case No : Special Civil Application No. 18172 of 2005

Bharatiya Technical Institute

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 20-09-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 37 Rule 3(7), Order 37 Rule 7, 80
Constitution of India, 1950 — Article 227
Limitation Act, 1963 — Section 5

Citation : (2006) 2 GLR 981

Hon'ble Judges : C.K. Buch, J

Bench : Single Bench

Advocate : Harshit S. Tolia, for the Appellant; U.R. Bhatt, A.G.P., for the Respondent

Judgement

C.K. Buch, J.—Heard Mr. H.S. Tolia, learned Counsel appearing for the petitioner and Mr. U. R. Bhatt, learned A.G.P., appearing on behalf of the respondent-State.

2.1 By way of this petition, the petitioner has assailed legality and validity of the order dated 12th January, 2005, passed by the learned Civil Judge (S.D.), Surat, below Application Exh. 8 in Summary Suit No. 6 of 2004 invoking jurisdiction of this Court under Article 227 of the Constitution of India.

2.2 The petitioner is the original plaintiff, whereby he has prayed for decree for recovery of amount of Rs. 16,31,21,000/- on allegation that he is entitled to the said amount because he has supplied agricultural equipment, etc. at the instance and order of the respondent-State. Notice was served by the plaintiff to the respondent-defendant u/s 80 of the CPC before instituting the cause. The suit is filed under Order 37, and therefore, after service of summons for appearance, the defendants were supposed to file their formal appearance before the Court within 10 days. However, because of want of administrative constraints, the defendants could not file formal appearance within 10 days but before the issuance of Court summons for judgment, the defendant-State filed an

application to record appearance as defendant with an intention to resist the suit. The application being beyond prescribed period of limitation as per the scheme of Order 37 of the Code of Civil Procedure, the learned Judge was requested to condone the delay of 77 days caused in filing formal appearance in the suit. The learned Judge after considering the details of the application and the affidavit filed in support thereof, allowed the application and condoned the delay caused and recorded appearance of the defendant-State as well as defendant No. 2-Director of Agriculture. Now, the say of the petitioner in the present petition is that the learned Civil Judge has grossly erred in condoning delay and ought to have proceeded with suit as if the suit has remained undefended.

3. Having considered the Order under challenge and the reasons assigned by the learned Judge, this Court is of the view that no jurisdictional or legal error can be said to have been committed by the learned Judge. The learned Judge has dealt with the authorities cited by the petitioner-plaintiff resisting the request to condone the delay made by the respondent-defendant. For the sake of brevity and convenience, I would like to reproduce relevant Paragraph: 2 of the Order under challenge, whereby the learned Judge has referred to all the 11 authorities, which are as under:

2. The plaintiff has filed written statement against this application at Exh. 11 and strongly opposed this application. On behalf of the plaintiff, learned Advocate has submitted written statement. In support of its case, learned Advocate for the plaintiff has cited following authorities:

1. Superintending Engineer, Ukai Circle and Another Vs. Arjunbhai Dabhubhai Godavale and Others,

Delay has to be condoned on mere asking by the appellant or the appellant is the State Government. Further, where the appellant is State Government or its officer, normal plea in the application filed for condonation of delay caused in filing the appeal is that the procedural formalities has taken long time. This stock phrase ground cannot be taken to be an excuse, in all the cases when Limitation Act, 1963 has prescribed limitation for filing appeals of the Government also. It is understandable that out of hundred cases in one case there is delay and there may be justifiable cause for filing the same beyond limitation, but my experience goes in this Court that in the appeals filed by the State Government exception is to file appeal in time, otherwise all the appeals are filed beyond the period of limitation prescribed limitation for filling appeal.

2. 2003 (2) GCD 68 (U.J.), Ahmedabad Muni. Corporation v. Nandkishor Sukhdevbhai Purohit.

In this case, our Honourable High Court observed that "no explanation comes from the applicant that what steps the applicant-Corporation has taken when the paper were returned with the opinion of the Advocate of the High Court on 18-7-2001, when they know that limitation is running against them. Even no particulars are furnished by the applicant that on what date they have been

advised by the Advocate of the City Civil Court to challenge the Order by filing Revision Application. As found, the papers were entrusted for filing the Revision Application. As found, the papers were entrusted for filing the revision application but the Advocate with his opinion has returned the papers on 18-7-2001. The Corporation even at the time knows about the period of limitation available and in Court's view, though earlier decision was taken to challenge the order by filing Revision Application, but the Advocate with his opinions has returned the papers on 18-7-2001. The Corporation even at that time knows about the period of limitation available and in Court's view, though earlier decision was taken to challenge the order by of filing Revision Application, the subsequent conduct clearly shows that they have not taken care to see that the Revision Application is presented within the period of limitation. No explanation is forthcoming in the application, and accordingly, this Court is of the view that no sufficient cause is shown, for which this Court is required to condone the delay.

3. 2004 (1) GCD 5 (NC) (CPC) New India Assurance Co. Ltd. v. Smt. Sukantil Pairav.

In this case, it is observed that in absence of sufficient grounds, delay of 62 days cannot be condoned.

4. 2002 (1) GCD 6 (NOSC) Humeed Joharan (d) v. Abdul Salam (d).

In this case, observation is that, period of limitation shall not remain suspended for delay caused by litigant in supply of stamp paper.

5. 1992 GLH 682, State of Gujarat v. Dhiralal Chottalal.

In this case, our Honourable High Court observed that "even though" the aforesaid affidavit is filed by Mr. Sanjiv Misra who is an I. A. S. Officer and who is an dignified and respected officer of circumspection, he has not stated in his affidavit as to when he got the judgment of the lower Court. He has also not stated in affidavit the period during which the investigation papers were not available to him. He has also not stated in his affidavit how much time he took in collecting all the aforesaid papers. He has also not stated in his affidavit how much time he took for arriving at a conclusion that appeal should be preferred against impugned order of acquittal passed by the learned Sessions Judge. The High Court observed that it had painfully read and noticed in the aforesaid affidavit of Mr. Sanjiv Misra, who holds a very high position and status in the public service and who is a respected and dignified officer of considerable circumspection, that the aforesaid necessary details are significantly missing. The Division Bench of this Court has already requested the learned Public Prosecutor at the very stage of the admission of the Misc. Criminal Application in the light of the judgment given by the Supreme Court in Ajit Singh's case. Under the circumstances, in this case, the State has miserably failed in making out any case for condoning delay in filing the aforesaid Misc. Criminal Application.

6. 1990 (1) GLH 35, State of Gujarat v. Naimulla Javadulla Kazi.

In this case, our Honourable High Court observed that "the facts of this case are concerned, it becomes clear that even though the petitioners were aware of the decision which had gone against them, they did not take any step for the purpose of filing an appeal till the period of limitation was over. It is only thereafter that they considered the matter, and ultimately, decided to file and appeal. This has resulted in delay of 300 days in filing the appeal. As stated above, even after coming to know about the adverse decision, the petitioners did not take steps for the purpose of filing an appeal against the same. They slept over the matter and work up at a very late stage in the subsequent proceeding and started taking steps for considering whether to file an appeal or not, and ultimately decided to file the same after about 300 days. This is a clear case of negligence, and therefore, the lower Appellate Court was justified in not condoning the delay.

7. 1995 (1) GLH 37 (SC), Jay Laxmi Salt Workers (P) Ltd. v. State of Gujarat.

(Fact of this citation is different from this case, so I am not discussing this in this case.)

8. 1995 (1) GLH 37 (SC), Jay Laxmi Salt Workers (P) Ltd. v. State of Gujarat.

In this judgment, our Honourable High Court observed that "an application for condonation of delay of 40 days has been occasioned on account of "the administration procedure". No affidavit is filed in support of this application by petitioner.

No details have been given as to when the Law Officer's report was prepared, when it was ready, to whom it was forwarded, on which date it was received and by which authority, how where and on which date or dates the relevant papers were processed, and how long it took at every stage of the matter etc. In fact, the condonation application is completely silent on all these vital factual aspect.

9. 1994 (1) GLH 560, Municipal Corporation of Ahmedabad v. Central Bank of India, Navrangpura Branch, Ahmedabad.

In this case, our Honourable Gujarat High Court has observed the "more administrative delay is not sufficient cause for condonation of delay for 324 days or 420 days or 537 days.

10. 1997 (1) GLH (UJ-27) 34, State of Gujarat v. Prajapati Mangaji Thakore.

In this judgment, our Honourable Gujarat High Court has observed that "It is duty of the Government to place on record that a particular procedure is not followed either on account of ignorance or mistake or negligence or fraud. No affidavit is filed by District Government Pleader in support of application for delay condonation.

11. Sudama Pandey and Others Vs. State of Bihar,

(Facts of this citation is different from the facts of the present case. Main object

of this citation is for speedy trial.)

I have perused all the above authorities, majority authorities are in law point of Section 5 of Limitation Act, To file an appeal limited period is more. Parties are also aware of trial of case as well as judgment of case. But under Order 37 or Code of C.P., limitation for appearance is only 10 days. Whether this period is sufficient for Government? The answer to this question is "No". Meaning of sufficient cause cannot be taken in narrow compass. No doubt, the object of legislature to make this provision for speedy trial, that does not mean that due to some delay for appearance in case, the door of justice shall be shut, but if there is sufficient case to condone the delay, then Court may grant condonation. The Order 37, Rule 3(7) CPC is as under:

Order 37, Rule 3(7): The Court of Judge, may for sufficient cause shown by the defendant, excuse the delay of the defendant in entering an appearance or in applying for leave to defend the suit.

4. In response to the query raised by the Court, Mr. Tolia for the petitioner, has fairly accepted that he is not in a position to point out specifically from any of the cited decision where the Apex Court has accepted that the Order of the lower Court is erroneous whereby the lower Court has condoned delay accepting the say of the Government that because of the administrative contingencies they could not file their appearance and the lower Court ought not have condoned the delay accepting the plea of the Government extended on the Ground of administrative contingency. This Court is not called upon to condone the delay, but it is supposed to evaluate the order passed by the learned Civil Judge. The learned Civil Judge has recorded that in view of totality of facts emerging from record and the fact stated before the Court, the learned Judge is satisfied as to the sufficiency of cause resulted into delay, and therefore, the delay is condoned by the learned Civil Judge.

5. Undisputedly, the Presiding Judge of the Court dealing with Summary suit has an independent power and jurisdiction to condone the delay. In other words, the learned Presiding Judge can extend the time prescribed in the scheme of the order. It will be difficult for this Court to accept the argument of Mr. Tolia that this being a special provision in dealing with Summary suit, interpretation of Sub-rule (vii) or Rule 7 of Order 37 or the CPC referred to hereinabove should be stricter vis-a-vis the scheme of Section 5 of the Limitation Act. Though, the language of both the provisions i.e. Sub-rule (vii) of Rule 7 of Order 37 of the CPC and Section 5 of the Limitation Act is materially different, but practically the intention of the legislature is that no party should suffer only on the ground of delay has been caused on account of any special circumstance or contingency. In a Suit of more than Rs. 16 crores, where the summons is served at Gandhinagar and the office of the Government Pleader has not been served with advance copy of the plaint, the learned Civil Judge has rightly decided to condone the delay caused in filing formal appearance on behalf of the defendant-State. This Court is asked to exercise supervisory jurisdiction in a matter where discretionary jurisdiction has

been exercised by the lower Court.

6. This Court (Coram: S. K. Keshote, J.) in the case of State of Gujarat and Others Vs. Heirs of Sitabai Ramchandra S. Ragunath Ramchandra S. Baxi and Others, has allowed the Revision Application referring to the decision in the case of N. Balakrishnan Vs. M. Krishnamurthy, whereby this Court has observed that (at page No. 2118 of GLR):

8. From reading of the impugned order, I find that the learned First Appellate Court has proceeded to find out the faults, and to certain extent the negligence which has been made by the defendant-petitioners in conducting the suit in the trial Court. These are not the relevant considerations while considering the application for condonation of delay caused in filing of the appeal. The Court is concerned with the explanation furnished for the delay occurred after the pronouncement of the judgment by the trial Court in the present case. Any conduct or negligence or carelessness in defending the suit in the trial Court, i.e. early in point of time of the date on which the decree is passed, are of no relevance whatsoever in the matter of consideration and deciding the application u/s 5 of the Limitation Act filed for condonation of delay caused in filing of the appeal against the decree passed by the trial Court. In this case, the learned First Appellate Court has not recorded the finding of fact that the application filed by the defendant-petitioners is mala fide or they have adopted any dilatory tactics to delay the filing of the appeal. It is not the case of the respondent nor is it a finding of the appellate Court that defendant-petitioners have deliberately and willfully acted in the matter to see that limitation prescribed in filing appeal is expired.

7. In the case of Sitabai Ramchandra (supra), this Court condoned delay directing the other side to pay costs of Rs. 1,000/-. If it emerges that delay is nothing but lethargy or act of negligence, it may not be condoned. In the present case, in a suit where amount claimed by the plaintiff is more than Rs. 16 lakhs, some delay on the part of responsible Government officials is likely to result into serious prejudice and miscarriage of justice. It is true that there is no direct allegation against any of the Government officer who was supposed to file formal appearance in the suit, but there is scope to suspect something going against the interest of the State. So the ratio emerging from the decision in the case of State of Bihar and Another Vs. Abhay Chand Bothra, would help the respondent-State. The ratio of this decision makes the order under challenge good and there is no scope of reversal of the order. This would result into dismissal of this petition at the threshold.

8. This Bench dealing with .Special Civil Application No. 16261 of 2005, in the case of Mukesh G. Tank v. State of Gujarat, decided on 19th September, 2005, has considered similar aspect and rejected the plea of resisting the order condoning delay.

9. So, in view above and also adopting the reasons assigned by this Court in the

said decision in the case of Mukesh (supra), this Court does not find any merit in this petition, and therefore, the same is hereby dismissed in limine.

10. A copy of this judgment be sent to the Secretary, Legal Department, so that they can make necessary arrangement for appearance in such or similar matters as expeditiously as possible, otherwise the interest of the State may seriously jeopardize in the Summary suit of a huge stake which is filed under Order 37 of the Code of Civil Procedure.