

(2023) 09 GUJ CK 0088

In the Gujarat High Court

Case No : R/Civil Application (For Condonation Of Delay) No. 1412 Of 2023 In F/
Cross Objection No. 27678 Of 2023

Chandubhai Roopsinh Kotwal

APPELLANT

Vs

New India Assurance Co. Ltd

RESPONDENT

Date of Decision : 29-09-2023

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2023) 09 GUJ CK 0088

Hon'ble Judges : Gita Gopi, J

Bench : Single Bench

Advocate : Dhara M Shah

Final Decision : Allowed

Judgement

Gita Gopi, J

1. Heard the learned advocate for the applicants.
2. By way of this application under Section 5 of the Limitation Act, 1963, the applicants have prayed for condonation of delay of 539 days occurred in preferring the cross objections.
3. Learned advocate for the applicants submits that only after receiving the memo of appeal, the applicants could seek legal advise and owing to the pandemic because of the restricted movement, legal assistance could not be received in time and the applicants were also facing financial crunch to make arrangement for the expenses and thus, that had led to delay of 539 days in filing the cross objections.
4. 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 meaningful 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 condoned 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."
5. Having heard the learned advocate for the applicants and considering the averments made in the application and as the delay is sufficiently explained and in view of the facts and circumstances of the case, the delay of 539 days occurred in filing the cross objections deserves to be condoned and is hereby condoned.
6. Accordingly, the present application is allowed.