

(2021) 10 GUJ CK 0017
In the Gujarat High Court

Case No : R/Civil Application No. 4198 Of 2019 In F/Civil Revision Application
No. 31890 Of 2019

Defence Estate Officer (Deesa Air Field)

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 01-10-2021

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2021) 10 GUJ CK 0017

Hon'ble Judges : Dr. Ashokkumar C. Joshi, J

Bench : Single Bench

Advocate : Ankit Shah, N R Desai, Sp Majmudar

Final Decision : Allowed

Judgement

Dr. Ashokkumar C. Joshi, J

1. Applicant - Defence Estate Officer (Deesa Air Field) has filed this application under Section 5 of the Limitation Act, 1963 for condonation of delay of 187 days caused in preferring the caption civil revision application.

2. Heard learned advocate Mr. Keval Brahmbhatt with learned advocate Mr. Ankit Shah for the applicant and learned advocate Mr. N.R. Desai with learned advocate Mr. S.P. Majmudar for the respondent No. 2.

3. It is stated in this application that in 1984 central Government decided to acquire land for Air-Field Deesa, for the Air Force and as per the requirement, the lands were segregated into 3380.875 acres including Village- Kamoda, Chekra Zakol, Nani, Varnoda, Rampur situated at Deesa, Banaskantha. It is also stated that in the year 1987-88, a notification under Land Acquisition Act has been issued and as per the Special Land Acquisition Officer amount of 0.70 ps for non irrigation land and Rs. 1 for the irrigation land was fixed. That, after, around this year Land Reference No. 558 to 585 of 1989 were filed before the District Court, Palanpur after leading evidence and relying on citations and other price of

surrounded land of these Villages, the amount was enhanced @ Rs.8 per sq. mtrs for irrigated land and Rs.8.30 per sq. mtrs for non-irrigated land in addition to Special Land Acquisition Officer's award.

4. Being aggrieved with the common judgment and order dated 15.12.2018, below Exh. 1, passed by the learned executing Court- Principal Senior Civil Judge, Palanpur. There is delay in preferring an revision application for availing the certified copy of the order dated 15.12.2018. The certified copy of the order dated 15. 12.2018 was applied on 18.12.2018, and the same was prepared on 29.12.2018. It is further stated that the file of the order passed by the executing court was sent to the central machinery for availing legal opinion of the Central Government, therefore, the delay has caused due to procedural aspect.

5. It is further stated initially upon receipt of the judgment, opinion was sought to the effect that not to prefer any revision but subsequently, they realized that the order of the learned trial Court is contrary to statutory provisions of law and the same was required to be challenged by preferring and appeal. It is further contended that refusal to condone the delay would result in a meritorious matter being thrown out at the very threshold and the same will defeat the cause of justice.

6. Learned advocate for the applicant has placed reliance upon the judgment delivered by the Hon'ble Supreme Court in case of State of Haryana Vs. Chandramani reported in 1996(3) SCC 132, wherein it is held that State machinery being impersonal machinery, there is likelihood of delay and considering the public cause, delay may be condoned of 187 days.

7. Per contra, learned advocate for the respondent No. 2 filed an affidavit-in-reply inter-alia stated that there is no explanation for the delay caused and the delay is willful as the applicant had remained negligent. It is also contended that no dates are given when the opinion was sought for preferring civil revision application. It is further contended that the revision application is not maintainable and the applicant relied upon the judgments is not applicable to the present case.

8. Learned advocate for the applicant has vehemently and fervently argued that in the present case, initially time was taken for availing the true copy of the order of the trial Court and subsequently the opinion was called for from the Central machinery and therefore delay is caused in preferring civil revision application. It is also contended that initially, the department was not in favour of filing any appeal but subsequently the department came to know that the order of the trial court is contrary to the provisions of law and therefore, they decided to file a civil revision application. Hence, the delay of 187 days caused and also relied upon the judgment of the Hon'ble Supreme Court.

9. Learned advocate Mr. N.R. Desai for the respondent No. 2 has heavily opposed this application for condonation of delay and submitted that as such no explanation is given by the applicant so far as the delay caused. He placed

reliance upon the judgment delivered by the Hon'ble Supreme Court in case of State of Uttar Pradesh vs. Amar Nath Yadav, (2014) 2 SCC 422, wherein it is held that the delay was of 481 days where the Government Machinery failed to explain the sufficient cause and resultantly dismissed the appeal, therefore, the present application is not maintainable.

9.1 He also placed reliance upon the judgment delivered by the Hon'ble Supreme Court in case of Union of India and Ors. Vs. Tata Yodogawa Limited and Anr., (2015) 9 SCC 102, wherein delay of only 51 days but the same was not explained properly and therefore, the SLP was dismissed. He also placed reliance upon the judgment delivered by the Hon'ble Supreme Court in the case of Lanka Venkateswarlu (D) By Lrs. Vs. State of Andhra Pradesh, 2011(0) GLHEL-SC 49460, wherein the delay of 3703 days in filing application for bringing on record but the same was not entertained.

9.2 He also placed reliance upon the judgment of Division Bench of this Court in the case of State of Gujarat Vs. Keshurbhai Dosabhai Ahir passed in Civil Application No. 1 of 2018 in Letters Patent Appeal No. 805 of 2018, wherein delay was of 672 days and because of absence of sufficient explanation the Civil Application and Letters Patent Appeal are dismissed, therefore, this civil application for condonation of delay may not be entertained and same may be rejected.

10. Having heard the arguments advanced by both the sides, it appears that in this application delay is of 187 days in preferring civil revision application. Further, the first ground is with regard to the availing the true copy of the order of the trial Court and the second ground is that initially the concerned department was not of the opinion to file revision application but subsequently the department came to know that the trial Court has decided the case which is against the provisions of law and the same is also contrary to the statutory provisions and therefore, they finally preferred civil revision application. Learned advocate for the application also placed reliance upon the judgment rendered by the Hon'ble Apex Court in State of Haryana vs. Chandra Mani & Ors., (Supra), wherein it is observed as under:

"When the State is an applicant, praying for condonation of delay, it is common knowledge that on account of impersonal machinery and the inherited bureaucratic methodology imbued with the note-making, file -pushing, and passing-on-the-buck ethos, delay on the part of the State is less difficult to understand though more difficult to approve, but the State represents collective cause of the community. Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest. The expression "sufficient cause" should, therefore, be considered with pragmatism in justice- oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of the Governmental conditions would be

cognizant to and requires adoption of pragmatic approach in justice-oriented process."

11. Therefore, in the present case also, prima-facie, it appears that delay is sufficiently explained, not only that but initially the concerned department was of the opinion that not to file any revision application but subsequently, the department came to know that the order passed by the trial Court is contrary to the statutory provisions. Further the file was moved by the Government Machinery and therefore, the delay is caused in filing civil revision application.

12. So far as the authorities upon which the learned advocate for the respondent placed reliance and coupled with the affidavit-in-reply the main contention is that the delay is not properly explained but this Court is of the view that the delay caused in preferring the civil revision application is explained properly. The first authority is concerned i.e. State of Uttar Pradesh vs. Amar Nath Yadav (Supra) wherein delay caused is of 481 days and the same was before the SLP and in the present case delay is of only 187 days coupled with sufficient explanation, therefore this authority is not helpful to the respondent.

13. So far as the second authority i.e. Union of India and Ors. Vs. Tata Yodogawa Limited and Anr., (Supra) wherein the delay of 51 days only but no attempt was made to explain the same. In the present case, from the beginning the applicant has explained and discussed the delay, therefore this authority is not helpful to the respondent. In the third authority i.e. Lanka Venkateswarlu (D) By Lrs. Vs. State of Andhra Pradesh, (Supra) wherein the delay of 3703 days, however, in the present case delay is of only 187 days, therefore, this authority is not helpful to the respondent. Further, so far as the judgment of Divisions Bench of this Court in the case of State of Gujarat Vs. Keshurbhai Dosabhai Ahir passed in Civil Application No. 1 of 2018 in Letters Patent Appeal No. 805 of 2018, wherein delay was of 672 days and the same was not explained properly but in the present case delay caused is sufficiently explained. Not only that but the delay is only of 187 days, therefore this authority is also not helpful to the present respondent. The reliance is placed upon the judgment in case of The State of Gujarat vs. Dhirajbhai Gandubhai in Civil Application No. 2 of 2018 in First Appeal No. 4216 of 2017, wherein delay of 1227 days, wherein it was observed by the Hon'ble Division Bench that the delay is just extremely long but in the present case delay is of 187 days coupled with the sufficient explanation, therefore this authority is not helpful to the respondent.

14. A beneficiary reference may also be made to a decision of the co-ordinate Bench of this Court in Mafatlal Apparels v. Akbarbhai Ganibhai Saiyed & Ors. , 2017 Law Suit (Guj) 1947, wherein it is observed as under:

"As far as the decisions relied upon by Mr. Dave the same are not applicable to the facts of the present case since in the reference, the case of the employees was being represented by Union leader and he informed the employees to remain present only when called for. They were never aware about dismissal of the

reference and where never informed that the reference was dismissed for want of prosecution. The Coordinate Bench of this Court in case of Rajesh Pukhraj Chauhan v. Sinter Plast Containers and another has held that it is trite that a litigant is permitted to litigate for his rights by having a decision from the Court of law on merits, rather than he is ousted on technical ground. A liberal approach is not out of place."

15. In the sum and substance, every case is required to be decided on merits rather than on technicalities, since the valuable rights of the citizen or State may not be jeopardized. In the aforesaid backdrop, the present application succeed and is allowed accordingly. Delay of 187 days caused in preferring the civil revision application is condoned. Rule is made absolute.