(2008) 09 GUJ CK 0002

In the Gujarat High Court

Case No : First Appeal No. 1187 of 2007

Dineshbhai Nandlal and Others APPELLANT

Vs

Municipal Commissioner RESPONDENT

Date of Decision : 29-09-2008

Acts Referred:
Limitation Act, 1963 — Section 5

Citation : (2008) 09 GUJ CK 0002

Hon'ble Judges : K.M. Thaker, J;C.K. Buch, J

Bench : Division Bench

Advocate : V.C. Jadawala,s 1 - 4, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

C.K. Buch, J.—We have heard Mr. V.C. Jadawa, learned advocate appearing for the appellants.

2. Before filing this First Appeal, the appellants have preferred MVA No. 4033 of 1997 in the Small Causes Court, Ahmedabad. It is submitted that the order under challenge passed by the learned Chief Judge, Small Causes Court, Ahmedabad is not sustainable on the grounds mentioned in the memo of the appeal. The opportunity for production of certain documents was not given to the appellants and the learned Chief Judge decided to dismiss the appeal. Actually, the appellants ought to have been given opportunity to produce such documents which is the backbone of the submission of Mr. Jadawala. For gravities and findings, we would like to reproduce the judgment under challenge whereby, the learned Chief Judge has observed that,

2. The appeal is filed along with the delay condone application, but I do not find any substance in the averments made in it. No sufficient cause has been pointed out by the appellant for the purpose of condonation of delay. Hence, the appeal deserves to be dismissed.

3. Even otherwise, the appellant has not produced any evidence to show that the

assessment fixed by the respondent is excessive and illegal. The appeal is also not maintainable as the taxes are not paid. Hence, following order is passed.

Undisputedly, the appellants before the Small Causes Court had challenged the GRV fixed by the respondent Municipal Corporation for the assessment year 1988-89 and the appeal was filed in the year 1997.

3. In view of the reasons assigned by the learned lower court for dismissal of the appeal, we do not find any merits in the appeal. There is no scope of evaluation of the judgment as we are in agreement with the reasons assigned by the learned lower court. It appears that the appeal is hopelessly time barred and the same was not even tendered with appropriate satisfactory documents. When any application comes before any court to condone the delay in exercise of the powers vested u/s 5 of the Limitation Act, then, the ultimate merits of the appeal has to be evaluated and the delay is not required to be condoned for the sake of condoning it. When the learned Chief Judge has found that otherwise also, there is no merits in the appeal, then, he decided to dismiss the appeal being time barred. When the court is not satisfied with the explanation as to the delay caused in filing the appeal, the application praying for condonation of delay is supposed to fail and when such application fails, the appeal automatically fails. In short, there is no merits in the First Appeal and therefore, the same is dismissed. Accordingly, we may impose cost but we are not inclined to do so as it would burden the poor appellants having only small property in the Ahmedahad city. The appeal is dismissed accordingly.

Before parting with the order, we say that if the grievance of the appellant qua duplication in assessment is found to be genuine, more particularly in the background of the subsequent decision of learned Small Causes Court, the respondent Corporation can consider the say of the appellant in an appropriate way and a sympathetical manner; and the respondent Corporation should not be much technical while taxing the assessee. The respondent Corporation if acts contrary to the subsequent finding qua the same property, the appellant obviously can take appropriate steps by making grievance against the respondent Corporation, if need be by moving a substantive petition.