

(2008) 01 GUJ CK 0044
In the Gujarat High Court

Case No : Civil Application for Condonation of Delay No. 15144 of 2007

Dwarkadas Prabhudas Patel and Another	APPELLANT
Vs	
Thakore Laxmanji Dhulaji and Others	RESPONDENT

Date of Decision : 11-01-2008

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2008) 1 GLH 714 : (2008) 1 GLR 870

Hon'ble Judges : K.M. Thaker, J

Bench : Single Bench

Advocate : Prakash K. Jani, for the Appellant; Jyotsna K. Patel, for Respondents 1.2.1, 1.2.2, 1.2.3 and 1.2.4 and Gaurang H. Bhatt, for Respondent 2, for the Respondent

Judgement

K.M. Thaker, J.—By this application u/s 5 of Limitation Act, the applicants, who are the original-petitioners, have prayed for condonation of delay of 1622 days in preferring the application for bringing heirs of original-respondent No. 1, who expired on 30.3.2003 on record. On behalf of the respondents, adjournments have been sought to file affidavit to oppose the application. Despite adjournments having been granted since 11th December 2007, until now no affidavit has been filed.

2. It is pertinent to note that in present case the original-petition has been filed in November 1999 and is admitted, and is pending for final hearing.

3. As per the averments made in the application, it is after the admission of the petition that the respondent No. 1 expired in March 2003. It is the case of the applicants that the applicants came to know about the sad demise of respondent No. 1 only when the matter came to be taken up for final hearing in December 2007 when they were informed by the respondent's advocate about the sad demise of respondent No. 1 and until then neither the petitioner nor petitioner's advocate was aware and/or informed about the sad demise of respondent No. 1. The applicants have also invoked provision of Order XXII Rule 10-A and urged

that necessary action for making application in prescribed time could not be made due to failure of respondent or their representative to inform the applicant.

4. In light of the said averments, which are not denied despite the fact that time for filing affidavit was granted, it becomes clear that the application does not suffer from lack of bona fides and there does not appear to be any deliberate inaction on part of the applicants. The application also cannot be said to be hit by gross negligence.

5. In view of the averments made in the application and in light of the view taken by the Hon'ble Supreme Court in the case of N. Balakrishnan Vs. M. Krishnamurthy, in paragraphs No. 11 and 12 as under that;

11. Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim *Interest reipublicae up sit finis litium* (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

12. A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words sufficient cause u/s 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide *Shakuntala Devi Jain Vs. Kuntal Kumari and Others*, and *The State of West Bengal Vs. The Administrator, Howrah Municipality and Others*, and in light of the observations by the Division Bench of this Court in the case between *Special Land Acquisition Officer, Godhra v. Lilavatiben Kodar Ranchhod and Ors.* reported in 2002 (3) G.L.H. 226, where the Bench, speaking through Hon'ble Mr. Justice J.N. Bhatt [as His Lordship, then was], observed in para 7 as under.

7. Apart from that the ultimate anxiety of the Court while dealing with an application of condonation of delay has been, to see that ordinarily no meritorious matter is thrown over board on the technical grounds of delay. The purpose and design incorporating the provision of Section 5 of the Limitation Act is to see that ordinarily a substantial justice is required to be given and ordinarily, unless there are circumstances running counter to the spirit of the

provision of Section 5, the meritorious matters are required to be dealt with and adjudicated upon on merits. It is rightly said that no party or person would stand benefited by filing appeal or application late without any reason ordinarily when he has made up his mind to challenge the impugned order, award, judgment or decision, as the case may be. There cannot be such presumption also. This proposition of law is also very well settled since long. Therefore, while dealing with an application for condonation of delay, one cannot start with presumption that party did not intend to question it. On the contrary, the presumption may be other way round. Whereas in the present case it is manifested in the application that the certified copy of the impugned common award was applied for on the same day when the Reference Court finalized the matters. Therefore, the contention that delay cannot be condoned in this group of matters is unsustainable and unacceptable.

I am inclined to hold that the applicants have made out sufficient cause for condoning the delay in preferring the present application. It would also not be in the interests of justice and in the fitness of things that when the petition which has been admitted and is pending for final hearing since 1999, the parties to the said proceedings and/or their interests may suffer adversely on account of delay. Considering the overall circumstances, the relief prayed for in the application is granted. The delay of 1622 days in preferring the application is condoned. Rule is made absolute. No order as to costs.