

(2023) 03 GUJ CK 0148
In the Gujarat High Court

Case No : R/Civil Application No. 3257 Of 2022 In F/First Appeal No. 17523 Of 2022

Hansaben Bhalabhai Madhvi Parmar

APPELLANT

Vs

Deputy Collector

RESPONDENT

Date of Decision : 29-03-2023

Acts Referred:

Citation : (2023) 03 GUJ CK 0148

Hon'ble Judges : Nikhil S. Kariel, J

Bench : Single Bench

Advocate : Tushar L Sheth, Roshni Patel

Final Decision : Allowed

Judgement

Nikhil S. Kariel, J

1. Heard learned Advocate Mr. Tushar Sheth on behalf of the applicants and learned Assistant Government Pleader Ms.Roshni Patel on behalf of the respondent-State.

2. By way of these applications, the applicants pray for condoning delay of 674 days which has occurred in preferring First Appeal against judgement and award passed by learned Additional Senior Civil Judge, Dhoraji dated 19.4.2018 in Land Reference Case No.168/2009.

3. Learned Advocate Mr. Sheth would emphasize on averments made in Para No. 2 of the application and would submit that since the same reflect sufficient cause being made out for condoning the delay, this Court may consider these applications and condoned the delay which has occurred in filing the First Appeal.

4. Learned Advocate Mr. Sheth on behalf of the applicants has relied upon a decision of this Court dated 5. 01.2023 in Civil Application (For Condonation of Delay) No. 1 of 2022 in F/First Appeal No. 36932 of 2022 and allied matters whereby this Court relying upon decisions of the Hon'ble Supreme Court had

condoned the delay of 967 days which had occurred in preferring First Appeals.

5. Learned Advocate Mr. Sheth would also emphasize on the decision of the Hon'ble Supreme Court in case of K. Subbarayadu & Ors vs. The Special Deputy Collector, (Land Acquisition) reported in 2017 (12) SCC 840 and would submit that considering the law laid down by the Hon'ble Supreme Court, the applicants-appellants would also waive their right to claim for interest upon enhanced compensation, if any, during the period of delay.

6. Heard the learned Advocates for the respective parties and perused the documents on record and also perused the decisions of the Hon'ble Apex Court in case of Collector, Land Acquisition, Anantnag and Anr. Vs. Msr. Katji and Ors. reported in AIR 1987 SC 1353 and Dhiraj Singh (Dead) Through Legal Heirs Vs. State of Haryana and Ors. reported in 2014 (14) SCC 127 relied upon by the learned Advocate for the applicants.

7. The Hon'ble Apex Court in case of Collector, Land Acquisition, Anantnag (supra) has observed as thus :

"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."

8. The Hon'ble Apex Court in case of Dhiraj Singh (supra) has observed as thus :

"we can take judicial notice of the fact that villagers in our country are by and large illiterate and are not conversant with the intricacies of law. They are usually guided by their covillagers, who are familiar with the proceedings in the Courts or the advocates with whom they get in touch for redressal of their grievance. Affidavits filed in support of the applications for condonation of delay are usually

drafted by the advocates on the basis of half-baked information made available by the affected persons. Therefore, in the acquisition matters involving claim for award of just compensation, the Court should adopt a liberal approach and either grant time to the party to file better affidavit to explain delay or suo motu take cognizance of the fact that large number of other similarly situated persons who were affected by the determination of compensation by the Land Acquisition Officer, or the Reference Court have been granted relief." In Samiyathal v. Tahsildar decided on 5-7-2013, this Court took cognizance of the fact that many landowners may not have been able to seek intervention of this Court for grant of enhanced compensation due to illiteracy, poverty and ignorance and issued direction that those who have not filed special leave petition should be given enhanced compensation."

9. Furthermore, this Court also relies upon the decision of the Hon'ble Apex Court in case of K. Subbarayudu and Ors. (supra), whereby the Hon'ble Apex Court has inter alia condoned delay considering the submission on part of the claimant therein that he would not claim interest on the enhanced amount for the delay period.

10. Having regard to the law laid down by the Hon'ble Supreme Court, more particularly whereby an application for condonation of delay is required to be considered liberally and further having regard to the statement made by learned Advocate Mr. Sheth upon instructions as per the decision of the Hon'ble Supreme Court in case of K. Subbaryadu & Ors (supra), in the considered opinion of this Court, the application deserves consideration.

11. Delay of 674 days which has occurred in preferring First Appeal challenging the judgement and award passed by learned Additional Senior Civil Judge, Dhoraji dated

19. 4.2018 in Land Reference Case No.168/2009, is hereby condoned, subject to the condition that the applicants-claimants shall not claim interest upon enhanced compensation, if any, for the period of delay.

12. With these observations and direction, the present Civil Application stands allowed. Rule is made absolute to the aforesaid extent.