
(2021) 09 GUJ CK 0098

In the Gujarat High Court

Case No : R/Civil Application No. 401 Of 2021 In F/First Appeal No. 9799 Of 2020

Kinnar Hasmukhbhai Shah

APPELLANT

Vs

Shankarbhai Dharmaji Damor

RESPONDENT

Date of Decision : 28-09-2021

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2021) 09 GUJ CK 0098

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

Bench : Single Bench

Final Decision : Allowed

Judgement

Dr. Ashokkumar C. Joshi, J

1. The Applicant has filed this Application for condonation of delay of 325 days in preferring the captioned First Appeal on the grounds stated in the memo of application.

2. Heard learned Advocate Mr. Vishal Mehta for the Applicant and learned advocate Ms. Masumi Nanavaty with learned Advocate Mr. Vibhuti Nanavati for Opponent No.3. The Court has taken up this matter for condoning the delay though the cause list reflects that the Opponent Nos. 1 and 2 are unserved.

2.1 Learned advocate for the applicants submits that delay of 325 days occurred in preferring the First Appeal because the applicant was having injuries and the applicant was completely bed ridden after the accident. He further submitted that the presence of the respondents No. 1 and 2 may kindly be dispense with.

3. Learned Advocate for the respondent has raised an objection to condone the delay in filing the captioned First Appeal.

4. Having heard the the arguments advanced by learned Advocate for the Applicant, there is no doubt that every case is required to be decided on merits rather than on technicality. Further, the delay is of 325 days and, as per catena

of judicial pronouncements by the Hon'ble Supreme Court, every matter is required to be decided on merits and such technicality may not come in the way. Therefore, if delay is condoned, the same would meet the ends of justice. The prime purpose for which Section 5 of the Limitation Act, 1963 was enacted so as to enable the Court to do substantial justice and that is the prime reason why very elastic expression and sufficient cause is employed therein so as to subserve the ends of justice.

5. This Court has considered the judgment passed by the co-ordinate bench reported in 2017 Law Suit (Guj) 1947 in the case of Mafatlal Apparels v. Akbarbhai Ganibhai Saiyed & Ors. 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 were 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."

6. Therefore, the Application deserves to be allowed and accordingly stands allowed. Delay is condoned.

Rule is made absolute.