

(2024) 04 GUJ CK 0091

In the Gujarat High Court

Case No : R/Civil Application (For Condonation Of Delay) No. 2135 Of 2024 In F/
First Appeal No. 17971 Of 2021

Mathurbhai Arshibhai & Anr

APPELLANT

Vs

State Of Gujarat & Ors

RESPONDENT

Date of Decision : 25-04-2024

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2024) 04 GUJ CK 0091

Hon'ble Judges : Devan M. Desai, J

Bench : Single Bench

Advocate : Krushnakant D Patel, Tejas P Satta, Aditya Davda

Final Decision : Allowed

Judgement

Devan M. Desai, J

1. Rule. Learned AGP waives service of notice of Rule for the respondent – State.
2. By way of present application filed under Section 5 of the Limitation Act, 1963 the applicants have prayed to condone delay of 292 days caused in preferring captioned First Appeal on the reasons stated in the application.
3. Learned advocate for the applicants submits that the captioned First Appeal is arising out of the Land Reference Case No.79/2017 which is in the group of LAR Nos.70/2017 to 95/2017. It is further submitted that delay which has occurred in preferring the First Appeals arising out of the aforesaid group of LAR numbers, has already been condoned by the Co-ordinate Bench of this Court on 27.10.2023.
4. Learned advocate for the applicants would submit that the present applicants are unaware of the provisions of law, which could permit him to file appeal, which is a statutory right. He has produced decision of the Hon'ble Apex Court in case of K. Subbarayadu and others Vs. The Special Deputy Collector (Land

Acquisition) reported in 2017(12) SCC 840 and would submit that considering the law laid down in aforementioned case, the applicants are not claiming their right for the interest upon the enhanced compensation, if any, for the delay period.

5. Learned Assistant Government Pleader while opposing this application, would submit that delay is not sufficiently explained and therefore, present application may be dismissed.

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. Mrs. Katji and Ors. reported in AIR 1987 SC 1353, wherein the Hon'ble Apex Court has observed as under:-

"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 nondeliberate 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."

7. With profit, I may also refer judgment of the Hon'ble Apex Court in case of Dhiraj Singh (Dead) Through Legal Heirs Vs. State of Haryana and Ors. reported in 2014 (14) SCC 127, wherein the Hon'ble Apex Court has observed 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 halfbaked 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."

8. Applying the ratio of aforesaid judgment and in background of the facts of the present case as well as considering the law laid down by the Hon'ble Apex Court in case of K. Subbarayadu (Supra), the application seeking condonation of delay deserves consideration. However, the claimant(s) would not be entitled to claim interest on the enhanced amount of compensation, if any, during the delay period.

9. In the result, present Application is allowed and delay caused in preferring captioned First Appeal is hereby condoned. However it is made clear that the applicants shall waive the claim of interest for the period of delay caused in preferring the First Appeal on enhanced amount of award if any. Rule is made absolute. No order as to costs.