

(2022) 03 GUJ CK 0009

In the Gujarat High Court

Case No : R/Special Civil Application No. 15471 Of 2018

Melaji Fakirji Thakore & 2 Other(S)

APPELLANT

Vs

Kankuben Gabhaji Thakore & 1 Other(S)

RESPONDENT

Date of Decision : 03-03-2022

Acts Referred:

Constitution Of India, 1950 — Article 227

Code Of Civil Procedure, 1908 — Order 7 Rule 11, Order 7 Rule 11(a), Order 7 Rule 11(d)

Limitation Act, 1963 — Section 5

Citation : (2022) 03 GUJ CK 0009

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

Bench : Single Bench

Advocate : Apurva R Kapadia

Final Decision : Allowed

Judgement

Dr. Ashokkumar C. Joshi, J

1. Heard learned Advocate Mr. Apurva R. Kapadia for the Petitioners. Though served, none has remained present on behalf of the Respondents.

2. Rule.

3. By way of this Petition, filed under Article 227 of the Constitution of India, the Petitioners / Original Plaintiffs has challenged the order dated 14.8.2018 passed in Civil Miscellaneous Application No. 13 of 2018 (hereinafter referred to as "the Application") by the learned 11th Additional District Judge, Ahmedabad (Rural) [hereinafter referred to as "the learned Trial Judge"], whereby the learned learned Trial Judge has rejected the Application, seeking condonation of delay, in preferring the Appeal preferred against the judgment and order passed by the learned Principal Senior Civil Judge, Ahmedabad (Rural), Mirzapur dated 4.2.2014 passed below Application Exh.19 under order 7 Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as "the Code") in Regular Civil Suit

No. 452 of 2011, whereby the Application filed by the Respondents (Original Defendants) came to be allowed and thereby Suit came to be dismissed under the provision of Order 7 Rule 11(a) & (d) of the Code.

4. Learned Advocate for the Petitioners has submitted that the impugned order runs contrary to the settled principle of law inasmuch as the Petitioners ought to have been given opportunity to meet with their case on merits and application filed for condonation of delay in preferring the Appeal, which ought to have been allowed by the learned Trial Court keeping in view the liberal approach. It is argued that the findings are contrary to the material placed on record and therefore, the findings suffer from vice of non-application of mind to the real controversy involved and the material placed on record. Learned Advocate for the Petitioners has submitted that learned Judge has failed to appreciate the oral as well as documentary evidence. It is submitted that the learned Trial Court ought to have considered the term "sufficient cause" in Section 5 of the Limitation Act and the delay in preferring the First Appeal ought to have been condoned. To support his submission, learned Advocate for the Petitioners has referred and relied upon the judgment of the Hon'ble Apex Court in case of *Collecto v. Katiji*, reported in AIR 1987 SC 1353 and submitted that the Hon'ble Supreme Court has observed that the legislature had conferred the power to condone the delay by enacting Section 5 of the Limitation Act in order to enable the courts to do substantial justice to the parties by disposing of matter on merits and the expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice. Learned Advocate for the Petitioners has further submitted that refusing to condone the delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. Learned Advocate for the Petitioner has further referred to and relied upon the judgment of the Hon'ble Delhi High Court in CRL L.P. No. 219 of 2006 - *CBI v. R.P.Tiwari*, decided on 7.8.2014.

Learned Advocate for the Petitioners has submitted that considering the ratio laid down by the Hon'ble Apex court and the Hon'ble Delhi High Court, the delay ought to have been condoned by the learned Trial Judge in preferring the Appeal.

5. This Court has considered the submissions made by the Petitioners and also considered the contentions raised in the memo of petition and has also perused the order dated 14.8.2018 passed by the learned Trial Judge in Civil Misc. Application No. 13 of 2018 and has gone through the reasons recorded by the learned Trial Judge in in the said order. Needless to state that the guidelines while considering the applications for condonation of delay have been far too well settled. In the case of *Collector, Land Acquisition Officer Vs. Mst. Katiji*; 1987 (2) S.C.C. 107 : (AIR 1987 SC 1353), the guidelines have been laid down as under :

"(1) Litigant does not stand benefitted by lodging an appeal late;

(2) Refusal to condone may result in meritorious matters being thrown out at the

very threshold and the cause of justice being defeated;

(3) In the matter of explanation of every day's delay, pedantic approach should be avoided. Rational common sense pragmatic approach should be invariably adopted;

(4) Substantial justice is to be preferred against technical flaws;

(5) There is no presumption that delay is always deliberate;

(6) Injustice is to be removed."

6. Bearing in mind above principles if one examines the matter in hand, though it is expected that the delay of each day is to be explained, the courts are supposed to take a pragmatic view rather than a pedantic one. It is expected that the rights are allowed to be determined on merits rather than by default. The parties are litigating over an ancestral property. The Petitioners are the Original Plaintiffs in the Suit. The reason explained by the Petitioners before the learned Trial Court is that the learned Trial Court has passed order on 4. 2.2014, but the Applicants' Advocate has not informed them the true and correct facts. The Petitioners later on came to know that their Suit is dismissed and therefore they immediately filed Application on 11.12.2017 to receive the certified copy from the Court which is received on 15.12.2017. As per the Petitioners, they immediately filed the Appeal within the limitation period.

7. True it is that the Law of Limitation has to be applied with all its rigors. Even if the consequences are harsh it has to be applied in an appropriate case even to non suit a person. However, when in the matter in hand, there is sufficient reason demonstrated by the applicant the delay deserves to be condoned by awarding some cost to the Petitioners / Original Plaintiffs.

8. In view of the submissions made by the learned Advocate for the Petitioners, in the opinion of this Court, the delay in preferring the Appeal ought to have been allowed by the learned Trial Judge in view of the various pronouncements by the Hon'ble Apex Court.

9. The present Petition therefore deserves to be allowed. The order dated 14. 8.2018 passed by the learned 11th Additional District Judge (Ad hoc) Ahmedabad District Court, (Rural) at Mirzapur, Ahmedabad in Civil Miscellaneous Application No. 13 of 2018 is hereby quashed and set aside. The delay is condoned subject to the Petitioners paying costs of Rs.10,000/-, which may be deposited before the learned Trial Court at Mirzapur within a period of four weeks from the date of this order.

Rule is made absolute.