

(2022) 02 GUJ CK 0055

In the Gujarat High Court

Case No : R/Civil Application No. 941 Of 2020 In F/Appeal From Order No. 3989 Of 2020

Nandlal Namdev Otvani

APPELLANT

Vs

Vijay Jayprakash Ahuja

RESPONDENT

Date of Decision : 15-02-2022

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2022) 02 GUJ CK 0055

Hon'ble Judges : Dr. A. P. Thaker, J

Bench : Single Bench

Advocate : Jaimin A Gandhi, Ketan A Dave, Sanjay G Udhwani

Final Decision : Allowed

Judgement

Dr.A. P. Thaker, J

1. The original defendant No.4 has preferred this Civil Application for condonation of delay of 399 days caused in preferring Appeal from Order

which he propose to file against the order dated 20.11.2018 passed below Exh-6/7 in Civil Suit No. 482 of 2016, whereby he has been restrained from

transferring, alienating or creating interest of any third party in respect of suit property till final disposal of the suit.

2. The applicant has submitted that he was suffering from financial crisis and he had no funds to challenge the impugned order nor did he has funds to

develop the subject land. He has submitted that now he has gained some financial strength through help of friends and relatives and. Therefore. he is

contemplating development of the subject land either himself or through some developer. He has submitted that due to such financial crises, delay has

occurred.

2.1 It is also contended that refusing to condone the delay will result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. It is also contended that if the delay is condoned, the respondent will not be affected and justice will be done to both the parties on merits. It is also contended that there has never been any intention on his part to flout any legal provisions or legal formalities and despite the best efforts on his part, delay has been caused only because of the circumstances beyond control. While reciting the decision of the Apex Court in N.

Balakrishnan v. M. Krishnamurthy, reported in AIR 1998 SC 3222 and State of Haryana v. Chandramani and Ors, reported in 1996 3 SCC 132. It is prayed by the applicant to condone the delay of 399 days occurred in preferring the Appeal from Order.

3. The respondent No.1 has resisted the application and has submitted that delay is of about more than 1 year and the reason advanced for seeking condonation of inordinate delay of having financial crisis is not acceptable. It is also contended that there is not a whisper in the entire application as to how and when the applicant came out of such alleged financial crisis, if at all there were financial crisis as alleged. It is also submitted that the application is too vague and evasive as no particulars are furnished and/ or any documentary evidences produced in support of the alleged cause advanced for seeking condonation of delay. It is also averred that total inaction, negligence and want of bonafides on the part of the applicant in the matter. It is also submitted that no sufficient cause has been shown by the applicant for condonation of delay and there is more than one year delay and, therefore, it is required to be rejected.

3.1 By way of narrating the facts of the suit, it is contended by him that the trial Court has granted injunction against the appellant after considering the admitted position and considering the documentary evidence as well as pleadings involved in the matter. It is also contended that the suit property is an ancestral property purchased by deponent's grandfather late Shri Gokuldas Ahuja who has expired on 4.8.2005 intestate after death of his grandfather, respondent No.2 executed registered sale deed dated 15.3.2011 in favour of the present applicant as he was sole owner of the property.

According to the deponent, he has undivided share by virtue of birth in the family of the Suit property as co-parcenor. He has also contended that

there is a clear cut findings by the trial Court that it is nobody's case that the execution of the sale deed by his father, was as a karta of HUF for

any legal necessity. He has also contended that at the time of death of his grandfather, he was 9 year old and at the time of execution of sale-deed he

was minor and, therefore, he has preferred the suit within 3 years from the date of attaining majority and, therefore, Civil Suit was preferred within a

period of limitation. He has also submitted that the applicant- appellant herein has been permitted to sale/ transfer and / or create interest of any third

party in respect of the suit property, the same would lead to multiplicity of litigation and, therefore, this Court may not interfere with the discretionary

order issued by the trial Court. On all these grounds, it is contended by the respondent No.1 to reject the application on merits.

4. Heard Mr. Jaimin Gandhi, learned advocate for the applicant, Mr. Ketan Dave, learned advocate for respondent No.1 and Mr. Sanjay Udhwani,

learned advocate for the respondent Nos. 2 , and 4. The learned advocate for the respondent No.1 has submitted written submissions along with

citations, which are taken on record. The respondent No.2 to 4 has also placed written submissions along with various decisions, which are taken on

record, wherein the stand is taken that there is no sufficient explanation of delay and it needs to be dismissed.

5. Mr. Jaimin Gandhi, learned advocate for the applicant has vehemently submitted the facts which are narrated hereinabove and stated in the

application itself. He has submitted the affidavit-in-rejoinder wherein he has submitted Statement of Bank Account as well as loan sanctioned letter

from the private institution and other documents to support his version that there was financial crisis at his end and, therefore, the delay has occurred.

In the written submissions also the same facts are narrated along with the extract of the decisions on which he has placed reliance. He has relied upon

the following decisions:

(1) Limbard Pravinsinh Ratansinh v. Takhatsang Banesang Nakum, delivered in SCA No. 14915 of 2011;

(2) N. Balakrishnan v. M. Krishnamurthy, reported in AIR 1998 SC 3222;

(3) State of Haryana v. Chandra Mani, reported in AIR 1996 SC 1623;

(4) Ram Nath Sao@ Ram Nath Sahu v. Gobardhan Sao, reported in AIR 2002 SC 1201;

- (5) Chhaga Ramabhai v. Heirs of Chhotabhai, reported in 1994 (1) GLH 16;
- (6) Narayanlal v. Sridhar Sutar, reported in AIR 1996 SC 2371;
- (7) Shri Narayan Bal & Ors v. Sridhar Sutar & Ors, reported in AIR 2020 Guj 1.

He has prayed to allow the present application.

6. Per contra, learned advocate for the respondent has submitted the same facts which are narrated in the written submissions as well as the affidavit

filed by the respondent No.1 and has contended that the delay has not been properly explained and the documentary evidence produced by the

applicant to show financial crisis does not reflect that in reality he was in financial crisis. It is also submitted at bar that this Court should not interfere

with the order of the trial Court, in view of the averment made in the affidavit-in-reply. While referring to the Bank

Account statement, it is contended by the respondent that even from the period from February, 2019 to 2.1.2020, there is no sufficient fund available in

the said account. It is also contended that the applicant has not cared to produce his profit and loss Account statement for the year 2019-2020 to

indicate as to what was his income during the relevant period. It is contended that the affidavit produced by applicant namely Jay Rajendrakumar

Patel, has nothing to do with the relevant period during which the applicant could not initiate this legal proceedings. It is contended that even this

affidavit clearly suggest that the applicant wants to create third party interest in the matter with a view to frustrate the suit, pending before the Trial

Court. According to the respondent, there is no sufficient cause advanced for seeking condonation of delay. It is prayed to dismiss the application. The

respondent No.1 has relied upon the following decisions:

1. Balwant Singh (Dead) v. Jagdish Singh and Others, reported in (2010) 8 SCC 685;

2. Rohit Chauhan v. Surinder Singh & Ors., reported in AIR 2013 SC 3525;

7. Learned advocate for the respondent Nos. 2 to 4 has submitted the same facts which are narrated in their written submissions, wherein the stand is

taken that there is no sufficient explanation of delay and it needs to be dismissed. The respondent Nos. 2 to 4 has relied upon the following decision:

1. Mehtab Khan and others v. Khushnuma Ibrahim Khan and others, reported in (2013) 9 SCC 221;

8. In case of N. Balakrishnan v. M. Krishnamurthy (Supra), regarding the delay the Court has observed as under:

“It is axiomatic that condonation of delay is a matter of discretion of the Court. Section 5 of the Limitation Act does not say that such discretion

can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes

delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases delay of very long range can

be condoned as the explanation thereof is satisfactory”.

8.1 In Para-10 thereof it is observed that: “The primary function of a Court is to adjudicate the dispute between the parties and to advance

substantial justice. Time limit fixed for approaching the Court in different situations is not because on the expiry of such time a bad cause would

transform into a good cause”.

8.2 In Para-11 it is observed that “Rule 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. Rules

of limitation are not meant to destroy the right of the parties”.

8.3 In Para-13, it has observed that, “It must be remembered that in every case of delay there can be some lapse on the part of the litigant

concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not

put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the

delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation”. It is observed that,

“while condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have

incurred quite a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant

the court shall compensate the opposite party for his loss”.

9. In case of Ram Nath Sao@ Ram Nath Sahu v. Gobardhan Sao (Supra), in para-11 it has been observed that Acceptance of explanation furnished

should be the rule and refusal an exception more so when no negligence or

inaction or want of bona fide can be imputed to the defaulting party.

10 In case of Chhaga Ramabhai v. Heirs of Chhotabhai (Supra), wherein the decision of the Supreme Court in case of Ram Sumiran and Others v. D.

D. C. and Others, reported in AIR 1985 Supreme Court 606 was relied and it was observed that poverty, ignorance and illiteracy prevalent in this

country of ours, cannot be ignored when the question regarding the belated action is on the anvil.

11. Heard learned advocate for the parties. Perused the material placed on record and decisions relied by both the sides.

12. At the outset it needs to be made clear that this is an application for consideration of delay caused in preferring Appeal from order. Therefore, the

decision let into the condonation of delay as to whether there was sufficient cause or not are to be taken into consideration. The decision based upon

the merits of the original case is concerned, has no relevance at this stage because this Court is not dealing with the merits of the case in detail at this

stage. Merits needs only to be looked into with a view to see as to whether any legal right is available to the applicant herein or not. Therefore, the

decisions relied upon by both the sides as to legality or otherwise of the impugned order of injunction is concerned, has no relevance at this stage.

Further, reliance placed by learned advocates for both the sides on the ground of sufficient cause in condonation of delay, are the same. In all the

decisions, pertaining to the view to be taken in application filed under Section 5 of the Limitation Act for condonation of delay are principally on the

same principle, therefore, any stand of referring individually thereof, the crux of the principle relating to condonation of delay, as is brought out from

those decisions, can be summarised as under:

It is axiomatic that condonation of delay is a matter of discretion of the Court. Section 5 of the Limitation Act does not say that such discretion can be

exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay

of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases delay of very long range can be

condoned as the explanation thereof is satisfactory. Rule 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. Rules of limitation are not meant to destroy the right of the parties. It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss.

13. Now, admittedly in this case, the plaintiff has filed the Suit claiming that he has share in the suit property which has been sold by his father to the present applicant by sale-deed. The case of the plaintiff is that property is ancestral property of his grandfather and at the time of death of grandfather, he was minor and when the property was sold by his father by registered sale-deed to the applicant, at that time also he was minor and the property being ancestral property of HUF, he has a co-parcener right and he has right in the suit property which has already been sold by registered sale-deed by his father to the applicant. In the Suit, the interim injunction has been passed against the present applicant who has got the property by way of registered sale-deed. Thus, the execution of the sale-deed in favour of the applicant is admitted by the plaintiff himself.

14. As the impugned order has been passed against the applicant herein who wants to prefer Appeal from Order, has definitely a legal right to challenge the order of the trial Court by way of filing Appeal from Order. At this stage only the point needs to be considered as to whether the delay occurred in preferring the said Appeal from Order is well explained or not. Now as the legal settled proposition which has been set-out here-in-above, considering the prevalent economic condition of the parties as well as even of the Country, the financial crisis can be considered to be one of the grounds for condonation of delay. The pivotal point of consideration would be

whether the parties concerned has taken dilatory tactics in proceeding with the matter for initiated any proceedings or whether there is a malafide on his part or not. If there is a malafide attributed and established against the party concerned, then definitely even shortest delay cannot be condoned. It cannot be presumed that a person against whom an interim injunction is operating, would adopt dilatory tactics except in case of compelled circumstances or circumstances out of his control, he may not be in a position to initiate or execute or take appropriate immediate steps against the injunction operating against him. Therefore, it cannot be presumed that the applicant was not proceeding with the matter bonafidely or there was dilatory tactics on his part in initiating the proceedings of Appeal from Order against the impugned order of injunction which is operating against him. Therefore, in present case, the applicant has made out sufficient cause for condonation of delay of 399 days occurred in preferring Appeal from Order. If application is condoned, no prejudice is likely to be caused to the other side and the other side would also get appropriate opportunity if Appeal from Order is preferred. The interim injunction is operating in their favour. Merely by permitting the applicant to prefer Appeal from Order would not automatically affect their possession or having interim injunction in their favour.

15. Thus, considering all these aspects, the present application is allowed. The delay of 399 days caused in preferring Appeal from Order which he propose to file against the order dated 20.11.2018 passed below Exh-6/7 in Civil Suit No. 482 of 2016, is hereby condoned. No order as to costs.

Registry to register the Appeal from Order accordingly