
(2023) 01 GUJ CK 0064

In the Gujarat High Court

Case No : R/Civil Application No. 859 Of 2019 In F/First Appeal No. 3758 Of 2019, Civil Application (For Set Aside Abatement) No. 3 Of 2019

New India Assurance Company Limited

APPELLANT

Vs

Rajabhai H. Mori

RESPONDENT

Date of Decision : 12-01-2023

Acts Referred:

Limitation Act, 1963 — Section 5, 51

Citation : (2023) 01 GUJ CK 0064

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

Bench : Single Bench

Advocate : Vibhuti Nanavati, Maulik J Shelat, Nishit A Bhalodi

Final Decision : Disposed Of

Judgement

Dr. Ashokkumar C. Joshi, J

Order in Civil Application No. 859 of 2019:

1. This is an application filed under Section 5 of the Limitation Act, 1963 praying for to condone the delay of 10 days caused in preferring the main first appeal against the judgment and award of the learned Tribunal.

2. Having regard to the submissions made and considering the averments made in the application, this application deserves to be allowed, more particularly, in view of the decision of the Apex Court in Collector Land Acquisition, Anantnag and Another V. Mst. Katiji and Others, AIR 1987 SC 1353, wherein, the Apex Court has observed as under:

"The legislature has conferred the power to condone delay by enacting Section 51 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on 'merits'. The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaning- ful manner which subserves the ends of

justice-- that being the life-purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:-

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 con- doned 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.

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal....."

3. Accordingly, the application succeeds and is allowed accordingly. Delay, as aforesaid, caused in preferring the main first appeal, is condoned.

Order in Civil Application No. 2 of 2019:

1. This is an application filed by the appellant – applicant praying for to bring on record the heirs and legal representatives of the deceased respondent No. 4 in the Civil Application No. 1 of 2019 as well as in the main first appeal and the civil application for Stay.
2. Rule is served upon the proposed legal heirs of the deceased respondent No. 4.
3. Regard being had to the submissions made and considering the averments made in the application as well as the documents on record, this application deserves to be allowed and is accordingly, allowed in terms of paragraph 7(A) of the application. Rule is made absolute accordingly.

Order in Civil Application No. 3 of 2019:

1. This is an application filed by the applicant – appellant praying for to set aside the abatement, if any, in bringing legal heirs of respondent No. 4 on record in the proceedings initiated by the applicant against the judgment and award of the Tribunal as well as to condone the delay of 998 days caused in preferring this application.

2. The Court has already passed the order permitting the applicant to bring on record the legal heirs of the deceased respondent No. 4 on record in the proceedings, as aforesaid (in Civil Application No. 2 of 2019). Further, the learned advocate for the applicant has made available for perusal the copies of the orders passed in the identical matters by this Court as well as by the coordinate Bench. Accordingly, this application is also allowed. Delay, as aforesaid, caused in filing this application is condoned and the abatement qua deceased respondent No. 4 is set aside. The application stands disposed of accordingly. Rule is made absolute accordingly.