

(2023) 09 GUJ CK 0038

In the Gujarat High Court

Case No : Civil Application (For Condonation Of Delay) No. 2 Of 2022 In F/First Appeal No. 2229 Of 2019, Misc. Civil Application (For Restoration) No. 1 Of 2022

Ramjibhai Janiyabhai Gavrit

APPELLANT

Vs

Arunbhai Ramjibhai Gamit

RESPONDENT

Date of Decision : 15-09-2023

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2023) 09 GUJ CK 0038

Hon'ble Judges : Gita Gopi, J

Bench : Single Bench

Advocate : Hiren M Modi

Final Decision : Allowed

Judgement

Gita Gopi , J

Order in CA 2/2022:-

1. Heard the learned advocate for the applicant.
2. By way of this application under Section 5 of the Limitation Act, 1963, the applicant has prayed for condonation of delay of 552 days occurred in preferring the application.
3. Learned advocate for the applicant submits that the delay has occurred in filing the restoration application stating that the matter got dismissed for default and there was no scope for the applicant to address the court regarding the difficulty in removing the office objections and further the pandemic had also added to the delay.
4. In the case of Collector, Land Acquisition, Anantnag and Another v. Mst. Katiji and Others reported in AIR 1987 SC 1353 it has been observed as under:-

"3. The legislature has conferred the power to condone delay by enacting Section 5 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 meaningful 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 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 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."
5. Having heard the learned advocate for the applicant and considering the averments made in the application and as the delay is sufficiently explained and in view of the facts and circumstances of the case, the delay of 552 days occurred in filing the application deserves to be condoned and is hereby condoned.
6. Accordingly, the present application is allowed.

Order in MCA 1/2022:-

1. Heard the learned advocate for the applicant.
2. By way of this application, the applicant has prayed to restore the main First Appeal.
3. Learned advocate for the applicant submits that the First Appeal was

dismissed for non-prosecution as the applicant could not timely remove the office objections.

4. Having heard the learned advocate for the applicant and considering the averments made in the application, the present application is allowed. Accordingly, main First Appeal is ordered to be restored on the file and one month's time is granted to the applicant to remove the office objections.