

(2022) 03 GUJ CK 0011
In the Gujarat High Court

Case No : R/Civil Application No. 298 Of 2022 In F/First Appeal No. 5648 Of 2022

Shekh Fatmaben Usmanbhai

APPELLANT

Vs

Special Land Acquisition Officer

RESPONDENT

Date of Decision : 02-03-2022

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2022) 03 GUJ CK 0011

Hon'ble Judges : A.G.Uraizee, J

Bench : Single Bench

Advocate : AV Prajapati

Final Decision : Disposed Of

Judgement

A.G.Uraizee, J

1. Rule returnable forthwith. Mr. Soham Joshi, learned AGP waives service of notice of Rule for the respondent – State.
2. Heard Mr. A.V.Prajapati, learned advocate for the applicant and Mr. Soham Joshi, learned AGP for the respondents.
3. The present application under Section 5 of the Limitation Act has preferred to condone the delay of 1936 days which has occurred in preferring First Appeal to assail the impugned judgment and award of the Trial Court.
4. Mr. A.V.Prajapati, learned advocate for the applicant submits that the applicant is a farmer having no knowledge about the legal remedy and hence, he could not prefer the appeal within prescribed period. It is his further submission that the applicant had not abandoned his right to prefer an appeal and no malafide is apparent so as to dismiss the present application.
5. He relied on the decision of the Supreme Court in case of K. Subbarayudu vs. Special Deputy Collector (Land Acquisition) reported in 2017 (12) SCC 840. He submits that the term "sufficient cause" should receive liberal construction so as

to advance substantial justice. He further submits that the applicant is ready and willing to forgo the interest and consequential statutory benefits ensuing from the impugned judgment and order for the period of delay, if the period of delay is condoned. He, therefore, urges that the delay may be condoned.

6. Mr. Soham Joshi, learned AGP has opposed this application and submits that the delay is inordinate and is not sufficiently and satisfactorily explained, except stating that the applicant is a farmer having no knowledge of legal nicety. He, therefore, submits that the delay may not be condoned.

7. I have given my thoughtful consideration to the submissions made at bar. It is undisputed fact that the delay of 1936 days which has occurred in preferring first appeal is huge delay.

8. At this stage, it is relevant to take into account the observations made by Supreme Court in paragraph Nos. 10 to 12 in case of K. Subbarayudu (supra), which read as under:-

"10. Before the High Court, the appellants relied upon Yellasiri Sarojanamma's case, in L.A.S.S. No.46 of 2015, in which the High Court condoned the delay of 3386 days in filing the land acquisition appeal suit subject to the condition that in the event, the appellant/claimant thereon succeed in appeal, she is not entitled to any interest in respect of the period of delay. The appellants contended that the same approach ought to have been adopted in the case of appellants also. Insofar as, the reliance placed upon by the claimants in L.A.S.S. No.46/2015, the High Court seems to have brushed aside the contention of the appellants on the puerile ground that the relevant fact situation in the said case is not forthcoming in the said order. In our view, the High Court was not right in adopting a different yardstick in the case of the appellants in not condoning the delay.

11. The term "sufficient cause" is to receive liberal construction so as to advance substantial justice, when no negligence, inaction or want of bona fide is attributable to the appellants, the Court should adopt a justice-oriented approach in condoning the delay. In State of Nagaland v. Lipok AO and Others (2005) 3 SCC 752: 2005 (4) JT 10, it was held as under:- "Section 5 SCC 752: 2005 (4) JT 10, it was held as under:-

"Section 5 is to be construed liberally so as to do substantial justice to the parties. The provision contemplates that the court has to go into the position of the person concerned and to find out if the delay can be said to have been resulted from the cause which he had adduced and whether the cause recorded in the peculiar circumstances of the case is sufficient".

12. With the acquisition of lands, the lifeline of the agriculturist is lost. There may be omission on the part of the claimants to adopt extra vigilance; but same need not be used as a ground to depict them with negligence or want of bona fide. In case of acquisition of lands of agriculturists, the courts ought to adopt a pragmatic approach to award just and reasonable compensation and not pedantic

in their approach. In *Dhiraj Singh (D) Thr. Lrs. Etc. Etc. v. Haryana State and Ors. Etc. Etc.* 2014 (9) SCALE 441, it was held as under:-

“15. Equities can be balanced by denying the appellants’ interest for the period for which they did not approach the Court. The substantive rights of the appellants should not be allowed to be defeated on technical grounds by taking hyper technical view of self-imposed limitations. In the matter of compensation for land acquisition, we are of the view that approach of the Court has to be pragmatic and not pedantic.”

9. In view of the above observations of the Supreme Court coupled with the fact that the applicant is willing and ready to forgo the interest on enhanced compensation and the statutory benefits flowing on the enhanced compensation for the period of delay, if the appeal is allowed, I am of the opinion that the delay needs to be condoned.

10. For the foregoing reasons, the application is allowed and delay of 1936 days caused in preferring first appeal is hereby condoned on condition that the applicant shall not entitle to interest on enhanced compensation and consequential benefits on enhanced compensation for the period of delay, if the appeal is allowed.

11. The application stands disposed of accordingly. Rule is made absolute.