

(1999) 12 GUJ CK 0058
In the Gujarat High Court

Case No : Civil Application No"s. 3461 to 3468 of 1999 in First Appeal No"s. 211 to 218 of 1999 and 211 to 218 of 1999

Spl. Laq Officer

APPELLANT

Vs

Ghamaji Madhaji

RESPONDENT

Date of Decision : 22-12-1999

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (1999) 12 GUJ CK 0058

Hon'ble Judges : Pradip Kumar Sarkar, J;M.R. Calla, J

Bench : Division Bench

Advocate : Premal Joshi, AGP, for the Appellant; A.J. Patel, for the Respondent

Final Decision : Dismissed

Judgement

M.R. Calla, J.—These eight Civil Applications have been moved in eight First Appeals seeking condonation of delay for a period of 216 days.

2. The award was passed on 19th March 1998 and the applicants applied for the certified copy of the award of Reference Court on 24th August 1998, i.e. much after the expiry of the period of limitation. In other words, by the time the application for certified copy was filed, the limitation had already expired. Not only that, even when the certified copy had been made ready on 25th August 1998 and it was also obtained on the same date, the appeals were filed on 21st January 1999. The delay is sought to be explained on the ground that the matter remained under consideration before different officers during this time. No explanation whatsoever has been given as to why the certified copy was not applied for during the period of limitation.

3. The matter does not end here. While the time-barred appeals were filed on 21st January 1999, the Civil Applications seeking the condonation of delay were not filed at that time, but they were filed in April/July 1999, i.e. much after the filing of the appeals. For this lapse also, no explanation whatsoever has been

given. It has been stated in para 2 of the Civil Application that office had raised the objection that there was a delay of 216 days. The fact that appeals are time barred is very well known to the appellants at the time of filing the appeals and therefore, there is no question of waiting for the objection of limitation to be pointed out by the Registry. The application for condonation of delay must invariably accompany the time barred appeal.

4. The Rule in the Civil Applications was issued on 30th September 1999 and on that date, an order had also been passed in the main appeals directing the office to call for the record and proceedings of the concerned land reference cases. An affidavit-in-reply dated 7th October 1999 has been filed on behalf of the claimants and the prayer for condonation of delay has been contested. Mr.A.J. Patel for the respondents has placed reliance on a decision of the Supreme Court in the case of Ajit Singh Thakur Singh and Another Vs. State of Gujarat, and has submitted that in the facts of this case, there is no question of condoning the delay of 216 days.

5. We have heard learned Counsel for the parties and we find that the limitation period had already expired on 24th August 1998 when the application for the certified copy had been moved. No explanation worth the name has been given as to why the certified copy was not applied for within time. Even for the period subsequent to 25th August 1998, i.e. the date on which the certified copy was received, all that has been stated is the movement of the file and that the matter reached the office of the Government Pleader of the High Court on 21st December 1998 and the appeals were filed on 21st January 1999, i.e. after a period of one month. In the facts and circumstances of this case, it cannot be said that the applicants were prevented by any reasonable and sufficient cause in filing the appeals within time more particularly when the certified copy itself was applied for after the expiry of limitation for which there is no explanation. On this aspect of the matter, para 6 of the Supreme Court judgment in the case of Ajit Singh Thakur Singh (supra) is very clear and the same is reproduced as under:

"...Now it is true that a party is entitled to wait until the last day of limitation for filing an appeal. But when it allows limitation to expire and pleads sufficient cause for not filing the appeal earlier, the sufficient cause must establish that because of some event or circumstance arising before limitation expired it was not possible to file the appeal within time. No event or circumstance arising after the expiry of limitation can constitute such sufficient cause. There may be events or circumstances subsequent to the expiry of limitation which may further delay the filing of the appeal. But that the limitation has been allowed to expire without the appeal being filed must be traced to a cause arising within the period of limitation. In the present case, there was no such cause, and the High Court erred in condoning the delay."

Therefore, in our considered opinion, it is no case for condoning the delay of 216 days in filing the appeals.

6. Apart from it, in view of the fact that on 30th September 1999, an order was passed to call for the record and proceedings of the concerned reference cases, learned Counsel for the applicants made submissions on merits also. In this regard, Mr.A.J.Patel appearing for the respondents has submitted that on the question of limitation as well as on the merits of the case, the matter is covered in favour of the claimants on the basis of the earlier order dated 7th May 1999 passed in First Appeal No.4300 of 1998 and yet another order dated 30th April 1999 passed as a common order by which First Appeals Nos.4682 to 4807 of 1998 were decided and he has also referred to an order dated 30th November 1999 whereby Civil Applications Nos.2738 to 2788 of 1999 in First Appeals Nos. 629 to 679 of 1999 with First Appeals Nos.629 to 679 of 1999 were decided. In the facts and circumstances of this case, we are not at all satisfied that the applicants were prevented by any reasonable and sufficient cause in filing the appeals in time. We do not consider it necessary to express any opinion on the merits of the case. The applications seeking condonation of delay are hereby dismissed and the Rule issued in each of these Civil Applications is hereby discharged.

7. Whereas the appeals are not entertained because the applications u/s 5 of the Limitation Act seeking condonation of delay have been rejected, the decision which is the subject matter of challenge in the appeals has not been tested by us on merits and therefore the order dated 19.3.1998 shall by itself be no basis to be used in other cases for the purpose of seeking a decision on merits by saying that appeal against this order was dismissed by the High Court. In view of the fact that the applications seeking condonation of delay are dismissed, the appeals cannot be entertained. Consequently, the same fail and eight appeals are also dismissed.