

(2011) 08 GUJ CK 0052
In the Gujarat High Court

Case No : Civil Application No. 6803 of 2011 in Second Appeal (Stamp Number)
No. 58 of 2011

State Of Gujarat and Another

APPELLANT

Vs

A. H. Gohel

RESPONDENT

Date of Decision : 09-08-2011

Acts Referred:

Law Officers Rules — Rule 54, 55

Citation : (2011) 08 GUJ CK 0052

Hon'ble Judges : Harsha Devani, J

Bench : Single Bench

Advocate : C.M. Shah, Assistant Government Pleader, for the Appellant; Deep D. Vyas, for the Respondent

Judgement

Harsha Devani, J

1. By this application, the applicant State of Gujarat seeks condonation of delay of 64 days that has occurred in preferring the Second Appeal (Stamp) No. 58 of 2011.

2. Ms. C.M. Shah, learned Assistant Government Pleader, appearing on behalf of the Appellant referred to the averments made in the memorandum of the application to submit that the delay has been duly explained and sufficient cause has been made out for condoning the delay. In the circumstances, the application deserves to be allowed by condoning the delay.

3. On the other hand, opposing the application, Mr. Deep D. Vyas, learned advocate for the Respondent submitted that all that is stated in the memorandum of the application is as to how the file moved from table to table. It was submitted that on a perusal of the averments made in the application it is apparent that the applicants have not thought it fit to apply for the certified copy of the judgment till as late as on 15th February, 2011. It was submitted that merely because the applicant is a State Government, it is not that in every case

the delay has to be condoned and that the applicants having failed to sufficiently explain the delay that has occasioned in filing the second appeal, the delay does not deserve to be condoned. In support of his submission, the learned advocate placed reliance upon the decision of the Supreme Court in the case of Lanka Venkateswarlu (D) by L.Rs. Vs. State of A.P. and Others, for the proposition that the concepts such as "liberal approach", "justice-oriented approach", "substantial justice" cannot be employed to jettison the substantial law of limitation. It was submitted that in the facts and circumstances of the case, the Respondents having failed to satisfactorily explain the delay that had occasioned in filing the second appeal, there is No. reason for the Court to adopt a liberal approach and condone the delay. It was submitted that the application, therefore, deserves to be rejected.

4. A perusal of the averments made in the memorandum of the application indicates that the judgment and decree passed by the learned Additional District Judge, Porbandar, in Regular Civil Appeal No. 20 of 2006 came to be pronounced on 30th October, 2010. Thereafter, the District Government Pleader vide letter dated 13th December, 2010 forwarded his opinion to the Deputy Secretary, Legal Department recommending that an appeal be preferred in the matter. On 1st January, 2011, the Legal Department instructed the Deputy Secretary, Health and Family Welfare Department to forward a report under Rules 54 and 55 of the Law Officers Rules. The said letter of the Legal Department came to be received in the branch dated 13.1.2011. On 15.1.2011 the letter of the Legal Department came to be entered in the Register and on 18.1.2011, the Deputy Section Officer prepared a note for obtaining sanction from the Legal Department for preferring an appeal in the matter as opined by the District Government Pleader. On 24th January, 2011, the Section Officer put up a note to the Under Secretary who on 27th January, 2011 submitted the file to the Law Officer of the Department, who thereafter, submitted the file to the Joint Secretary, who in turn, placed the file before the Principal Secretary. On 28th January, 2011, the Principal Secretary forwarded the file to the Secretary, Legal Department for according the sanction for filing an appeal in the matter and on 10.2.2011, the Legal Department, by passing a Government Resolution in this regard, took a decision to file an appeal. On 14.2.2011 Government Pleader's Office received the Government Resolution instructing the Government Pleader to file an appeal in the matter. However, the same was not accompanied by a certified copy of the judgment and decree. The Office of the Government Pleader, therefore, addressed a telegram dated 15.2.2011 to the concerned department for sending the certified copy of the judgment and decree. It appears that thereafter the certified copy of the judgment and decree came to be applied for on 21.2.2011, which came to be delivered on 23.2.2011 and was received by the Office of the Government Pleader, High Court on 1st March, 2011. It appears that thereafter, some time was consumed in drafting the memorandum of appeal and the second appeal ultimately came to be filed on 2nd April, 2011.

5. In the light of the facts noted herein above, it is apparent that No. sooner than

the opinion of the Government Pleader was received by the Legal Department, steps have been taken for filing the appeal. From the averments made in the application, it cannot be said that there was any deliberate negligence on the part of the applicants or that the applicants had at any point of time given up the cause. In the circumstances, in the opinion of this Court, sufficient cause has been made out for filing the appeal beyond the prescribed period of limitation. The decision of the Supreme Court in the case of Lanka Venkateswarlu (*supra*) on which reliance has been placed by the learned advocate for the Respondent does not in any manner support the case of the Respondent inasmuch as in the facts of the said case, there was a gross delay in filing the appeal and the High Court while condoning the delay had observed that in the normal case the High Court would have thrown out the application without having a second thought in the matter. It was in the peculiar facts of the said case that the Supreme Court observed that it was at a loss to fathom any logic or rationale, which could have impelled the High Court to condone the delay after holding the same to be unjustifiable. The facts of the present case stand on totally different footing from the facts of the said case.

6. As noticed hereinabove, the delay of 64 days in filing the second appeal has been satisfactorily explained by the applicants. In the circumstances, the application is allowed. The delay of 64 days that has occurred in filing Second Appeal (Stamp) No. 57 of 2011 is hereby condoned. Rule is made absolute accordingly with No. order as to costs.

7. Registry is directed to give regular number to the second appeal and list the same for hearing on 18th August, 2011.