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**(2000) 02 GUJ CK 0054**  
**In the Gujarat High Court**

**Case No :** Civil Application No. 10305 of 1999 in Second Appeal No. 68 of 1999

State of Gujarat

APPELLANT

Vs

Heirs of Decd. Praga Dungar

RESPONDENT

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**Date of Decision :** 02-02-2000

**Acts Referred:**

Limitation Act, 1963 — Section 5

**Citation :** (2000) 02 GUJ CK 0054

**Hon'ble Judges :** K.M. Mehta, J

**Bench :** Single Bench

**Advocate :** S.P. Dave, AGP, for the Appellant; M.B. Parikh, for the Respondent

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**Judgement**

K.M. Mehta, J.—By means of filing this application u/s 5 of the Limitation Act, 1963, the applicants have prayed to condone delay of 47 (Forty Seven) days caused in filing Second Appeal against the judgment and award dated 24.12.98 passed by the learned Assistant Judge, Jamnagar in Regular Civil Appeal No.51 of 1996.

2. Reasons as to why appeal could not be filed in time are detailed in paragraphs 3 to 6 of the application.

3. Learned advocate Mr.M.B.Parikh appearing on behalf of respondents and has opposed this application.

4. In this case the applicants-original defendants submitted that the judgment and award was rendered by the Hon"ble Court on 24.12.98. The certified copy was applied on 4.1.99, which was ready for delivery on 16.1.99, and the same was actually delivered on 18.1.99. It was further submitted that the District Government Pleader, Jamnagar, has sent proposal in the instant case which was received in concerned branch of Legal Department on 28.1.99. After receiving the said proposal on 12.2.99, the concerned Assistant prepared a note to call for report under Rule 132, 133 of Law Officer"s rule from the concerned Administrative Department, the same was submitted to Dy.Secretary. Thereafter,

on 16.2.99 the said file was sent to Revenue Department, Sachivalaya, Gandhinagar. It was further submitted that file received back alongwith required report from the Revenue Department which was received in Legal Department on 15.3.99, hence on the same day concerned Assistant prepared a detail note to file an appeal in the instant case and submitted to Dy.Secretary for taking decision for filing an appeal. The Dy.Secretary perused the said file and took decision to file an appeal in the instant case on 17.3.99 and thereafter the said decision was approved by Secretary on the same day. On 8.4.99 the said decision of Legal Department was accorded by Hon"ble Minister (Law) and thereafter on 9.4.99 the draft of Resolution were prepared and sent it to typing section, and after receipt thereof from the typing section, the same was placed before Under Secretary on 30.4.99 for the purpose of signature. On 5.5.99 the same was duly signed on the same day to the office of the Government Pleader, High Court, Ahmedabad, was instructed to file an appeal in the instant case. Thereafter the matter was handed over to concerned Assistant Government Pleader, who after going through the same prepared memo of Second Appeal and ultimately appeal was filed on 10.5.99. I have also perused the necessary averments made in the application and I find that there is a "sufficient cause" in filing this Second appeal by the Government. I find that the action of the Government is bonafide, there is no inaction or negligence on the part of the Government in filing Second Appeal as there was only delay of 47 (forty seven) days in filing appeal.

5. As regards the condonation of delay application is concerned, in judgment of the Supreme Court reported in Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, (Speaking to Hon"ble Mr.Justice M.P.Thakkar,J.) where the question before the Supreme Court was "To condone, or not to condone, is not the only question. Whether or not to apply the same standard in applying the "sufficient cause" test to all the litigants regardless of their personality in the said context is another." In para 3 the Supreme Court laid down following approach in considering the delay application:

"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 malafides. 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.

"There is no warrant for according a stepmotherly treatment when the 'State' is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file pushing, and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant non grata status. The Courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits."

In judgment of the Supreme Court in the case of G. Ramegowda, Major and Ors Vs. Special Land Acquisition Officer, Bangalore, where the Supreme Court (Hon'ble Justice M.N.Venkatachaliah J., as he was then) after considering the aforesaid observation in para 8 has observed as under:

"In litigations to which Government is a party there is yet another aspect which, perhaps, cannot be ignored. If appeals brought by Government are lost for such defaults, no person is individually affected; but what, in the ultimate analysis, suffers is public interest. The decisions of Government are collective and institutional decisions and do not share the characteristics of decisions of private individuals. The law of limitation is, no doubt, the same for a private citizen as for Governmental authorities. Government, like any other litigant must take responsibility for the acts or omissions of its officers. But a somewhat different complexion is imparted to the matter where Government makes out a case where public interest was shown to have suffered owing to acts of fraud or bad faith on the part of its officers or agents and where the officers were clearly at cross-purposes with it."

In another judgment of the Supreme Court in the case of State of Haryana Vs. Chandra Mani and others, , after considering the earlier decision of the Supreme Court (Speaking to Justice K.Ramaswamy, J.) in para 10 the Supreme Court has observed as follows:

It is notorious and common knowledge that delay in more than 60 per cent of the cases filed in this Court- be it by private party or the State are barred by limitation and this Court generally adopts liberal approach in condonation of

delay finding somewhat sufficient cause to decide the appeal on merits. It is equally common knowledge that litigants including the State are accorded the same treatment and the law is administered in an even-handed manner. When the State is an applicant, praying for condonation of delay, it is common knowledge that on account of impersonal machinery and the inherited bureaucratic methodology imbued with the note-making, file-pushing, and passing-on-the-buck ethos, delay on the part of the State is less difficult to understand though more difficult to approve, but the State represents collective cause of the community. It is axiomatic that decisions are taken by officer/agencies proverbially at slow pace and encumbered process of pushing the files from table to table and keeping it on table for considerable time causing delay - intentional or otherwise - is a routine. Considerable delay of procedural red tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest. The expression "sufficient cause" should, therefore, be considered with pragmatism in justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of the Governmental conditions would be cognizant to and require adoption of pragmatic approach in justice-oriented process. The Court should decide the matters on merits unless the case is hopelessly without merit. No separate standards to determine the cause laid by the State vis-a-vis private litigant could be laid to prove strict standards of sufficient cause."

There is another judgment of the Supreme Court in the case of *Special Tehsildar, Land Acquisition, Kerala Vs. K.V. Ayisumma*, wherein the Supreme Court has observed in para 2 as under:

"It is now settled law that when the delay was occasioned at the behest of the Government, it would be very difficult to explain the day to day delay. The transaction of the business of the Government being done leisurely by officers who had no or evince no personal interest at different levels. No one takes personal responsibility in processing the matters expeditiously. As a fact at several stages, they take their own time to reach a decision. Even in spite of pointing at the delay, they do not take expeditious action for ultimate decision in filing the appeal. This case is one of such instances. It is true that Section 5 of the Limitation Act envisages explanation of the delay to the satisfaction of the Court and in matters of Limitation Act made no distinction between the State and the citizen. Nonetheless adoption of strict standard of proof leads to grave miscarriage of public justice, it would result in public mischief by skilful management of delay in the process of filing the appeal. The approach of the Court would be pragmatic but not pedantic."

In another judgment of the Supreme Court in the case of *Rajashekar Sankappa Taradandi and others Vs. Asstt. Commissioner and Land Acquisition Officer and*

others, , the Supreme Court speaking to Justice K.T.Thomas, J, in para 12 and 13 has observed as under:

"A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" u/s 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide *Shakuntala Devi Jain Vs. Kuntal Kumari and Others*, and *The State of West Bengal Vs. The Administrator, Howrah Municipality and Others*, ."

"It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of malafides or it is not put-forth as part of a dilatory strategy the Court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the Court should lean against acceptance of the explanation. While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite a large litigation expenses. It would be a salutary guideline that when Courts condone the delay due to laches on the part of the applicant the Court shall compensate the opposite party for his loss."

In another judgment of the Supreme Court in the case of *State of Andhra Pradesh Vs. I. Chandrasekhara Reddy and Others*, , wherein the Supreme Court speaking to Justice S.B.Majmudar,J. in para 8 has observed as follows:

"Consequently, there was eight days delay in filing objections which should have been condoned in the interest of justice. We would have been required to closely examine this contention to find out as to whether the delay was of 62 days or eight days. In either case, we would have been inclined to condone the delay in the interest of justice as a huge amount of public money is involved."

6. In view of the above cited decisions of the Supreme Court, I am of the view that though there is a delay regarding procedure to be followed by the Government in filing appeal, however, as per the ratio decided on the various decisions of the Supreme Court which are extracted above, in my view, the delay has to be condoned in this behalf.

7. For the foregoing reasons and observations, this Civil Application for condonation of delay succeed. Delay of 47 (Forty Seven) days caused in filing Second Appeal No.68 of 1999 against the impugned judgment and award is condoned. Rule is made absolute accordingly with no order as to costs.

8. Office is directed to notify Second Appeal No.68 of 1999 on admission/hearing board on 21st February, 2000.