

(2022) 03 GUJ CK 0034

In the Gujarat High Court

Case No : R/Special Civil Application No. 19519 Of 2019

State Of Gujarat

APPELLANT

Vs

MESSRS Rashmi Sugandh

RESPONDENT

Date of Decision : 11-03-2022

Acts Referred:

Constitution Of India, 1950 — Article 226, 227
Limitation Act, 1963 — Section 5

Citation : (2022) 03 GUJ CK 0034

Hon'ble Judges : Dr.Ashokkumar C. Joshi, J

Bench : Single Bench

Advocate : Megha Chitaliya

Final Decision : Allowed

Judgement

Dr. Ashokkumar C. Joshi, J

1. Rule.

2. Though served, the respondent – original plaintiff has put in no appearance, leaving no option for the Court but to proceed with the matter.

3. This writ petition under Article 226/227 of the Constitution of India, is filed by the petitioner – State against an order dated 16.07.2018 passed by the learned 3rd Additional District Judge, Gandhidham – Kachchh (herein after referred to as "the District Judge") in Misc. Civil Application No. 17 of 2015, whereby, the learned District Judge was pleased to reject the said application for condonation of delay of 59 days caused in preferring the appeal against the judgment and decree dated 31.12.2014, passed by the learned 2nd Additional Senior Civil Judge, Gandhidham – Kachchh, partly allowing the said suit, directing the petitioner herein to pay an outstanding amount of Rs.1,64,736/- towards subsidy within 60 days. The petitioner herein was also restrained from recovering an amount of Rs.1,03,704/- from the respondent – plaintiff.

4. Heard, learned AGP Ms. Megha Chitaliya for the petitioner – State. She submitted that the learned District Judge has committed a grave error in rejecting the delay condonation application in filing the appeal inasmuch as the delay is of only 59 days, which in no way, can be termed as inordinate one. It is submitted that the petitioner – applicant is the State authority and has to follow requisite procedures and to avail the approvals from the concerned department/s and in the process, such delay has been occurred, however, the learned Judge has failed to appreciate such an important aspect of the matter and thereby, erred in rejecting the delay condonation application. Accordingly, making such submissions, the learned AGP has requested to condone the delay caused in filing the appeal. She has further prayed to set aside the execution proceedings being Regular Civil Execution No. 69 of 2018, wherein, the seizer order dated 01.05.2019 has been passed by the learned 3rd Additional Civil

5. Regard being had to the submissions made and considering the averments made in the petition so also considering the impugned order dated 16.07.2018 passed by the learned 3rd Addition District Judge, Kachchh, it appears that the suit filed by the respondent herein came to be partly allowed vide judgment and order dated 31.12.2014 and in preferring the appeal thereagainst, there was a delay of 59 days, for the which, the petitioner preferred Misc. Civil Application No. 17 of 2015 which came to be rejected by the aforesaid order dated 16.07.2018. Further, in an execution petition filed by the respondent, the learned Court below, issued the seizer order dated 01.05.2019 and hence, the petitioner is before this Court.

5.1 So far as the delay is concerned (which is of only 59 days), as per the catena of decisions of the Apex Court, every matter is required to be decided on merits rather than mere technicalities. The prime purpose for which Section 5 of the Limitation Act, 1963 was enacted was to enable the Courts to do substantial justice and that is the prime reason as to why very elastic expression and sufficient cause is employed therein so as to sub-serve the ends of justice. It is trite that in a delay application, sufficient cause is the paramount consideration and if sufficient cause is shown, the Court should generally condone the delay. However, if the sufficient cause is imbibed with the laxity on the part of the delayer despite due knowledge, then Court should restrain itself from encouraging such practice and condone the delay.

5.2 The Apex Court, in Indian Oil Corporation Ltd. and Ors. vs. Subrata Borah Chowlek and Ors. (12.11.2010 – SC) : MANU/SC/1252/2010 has observed as under:

“7. Having heard the Learned Counsel, we are of the opinion that in the instant case a sufficient cause had been made out for condonation of delay in filing the appeal and therefore, the High Court erred in declining to condone the same. It is true that even upon showing a sufficient cause, a party is not entitled to the condonation of delay as a matter of right, yet it is trite that in construing sufficient cause, the Courts generally follow a liberal approach particularly when

no negligence, inaction or mala fides can be imputed to the party. (See: *Shakuntala Devi Jain v. Kuntal Kumari and Ors.* MANU/SC/0335/1968 : (1969) 1 SCR 1006; *The State of West Bengal v. The Administrator, Howrah Municipality and Ors.* MANU/SC/0534/1971 : (1972) 1 SCC 366; *N. Balakrishnan v. M. Krishnamurthy* MANU/SC/0573/1998 : (1998) 7 SCC 123; *Sital Prasad Saxena v. Union of India and Ors.* MANU/SC/0294/1984 : (1985) 1 SCC 163).

8. In *Ramlal, Motilal and Chhotelal v. Rewa Coalfields Ltd.* MANU/SC/0042/1961 : (1962) 2 SCR 762, this Court held that:

In construing Section 5 it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favor of the decree-holder to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired the decree-holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge, and this legal right which has accrued to the decree-holder by lapse of time should not be light-heartedly disturbed. The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown discretion is given to the court to condone delay and admit the appeal. This discretion has been deliberately conferred on the court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice. As has been observed by the Madras High Court in *Krishna v. Chathappan* ILR (1890) 13 Mad 269 "Section 5 gives the court a discretion which in respect of jurisdiction is to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood; the words 'sufficient cause' receiving a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fide is imputable to the Appellant.

9. Similarly, in *Ram Nath Sao Alias Ram Nath Sahu and Ors. v. Gobardhan Sao and Ors.* MANU/SC/0135/2002 : (2002) 3 SCC 195, this Court observed that:

But one thing is clear that the courts should not proceed with the tendency of finding fault with the cause shown and reject the petition by a slipshod order in over-jubilant disposal drive. Acceptance of explanation furnished should be the rule and refusal, an exception, more so when no negligence or inaction or want of bona fides can be imputed to the defaulting party. On the other hand, while considering the matter the courts should not lose sight of the fact that by not taking steps within the time prescribed a valuable right has accrued to the other party which should not be lightly defeated by condoning delay in a routine-like manner. However, by taking a pedantic and hyper technical view of the matter the explanation furnished should not be rejected when stakes are high and/or arguable points of facts and law are involved in the case, causing enormous loss and irreparable injury to the party against whom the suit terminates, either by default or inaction and defeating valuable right of such a party to have the decision on merit. While considering the matter, courts have to

strike a balance between resultant effect of the order it is going to pass upon the parties either way.

10. In *State (NCT of Delhi) v. Ahmed Jaan* MANU/SC/7946/2008 : (2008) 14 SCC 582, while observing that although no special indulgence can be shown to the Government which, in similar circumstances is not shown to an individual suitor, one cannot but take a practical view of the working of the Government without being unduly indulgent to the slow motion of its wheels, highlighted the following observations of this Court in *State of Nagaland v. Lipok Ao and Ors.* MANU/SC/0250/2005 : (2005) 3 SCC 752:

"It is axiomatic that decisions are taken by officers/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 a 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 requires adoption of pragmatic approach in justice-oriented process."(See also: *Special Tehsildar, Land*

Acquisition, Kerala v. K.V. Ayisumma MANU/SC/0694/1996 : (1996) 10 SCC 634; *State of Haryana v. Chandra Mani and Ors.* MANU/SC/0426/1996 : (1996) 3 SCC 132)

11. It is manifest that though Section 5 of the Limitation Act, 1963 envisages the explanation of delay to the satisfaction of the Court, and makes no distinction between the State and the citizen, nonetheless adoption of a strict standard of proof in case of the Government, which is dependent on the actions of its officials, who often do not have any personal interest in its transactions, may lead to grave miscarriage of justice and therefore, certain amount of latitude is permissible in such cases.

12. Examined on the touch-stone of the afore-noted observations, we are of the view that in the present case, the conduct of the Appellants does not indicate inaction, negligence or mala fides. The explanation furnished for the marginal delay of 59 days, in our opinion, constitutes a sufficient cause and therefore, deserves to be accepted."

(emphasis supplied)

5.3 Thus, the consideration which cannot be ignored is that if sufficient cause for excusing delay is shown, discretion is given to the Court to condone delay. This discretion has been deliberately conferred on the Court in order that judicial

power and discretion in that behalf should be exercised to advance substantial justice.

5.4 In the instant case, as said earlier, the petitioner is the State authority, which has to undergo certain procedures and take approval from the concerned department/s and the delay is of only 59 days, which cannot be said to be inordinate one to excuse the same. Accordingly, the impugned order dated 16.07.2018 requires to be set aside.

5.5 So far as the prayer qua setting aside the execution proceedings is concerned, since the Court has already condoned the delay in filing the appeal, the petitioner may resort to the remedy available to him under the law before the appropriate forum.

6. For the aforesaid observations and discussions, this petition succeeds and is allowed accordingly in part. The impugned order dated 16.07.2018 passed in Misc. Civil Application No. 17 of 2015 by the learned 3rd Additional District Judge, Gandhidham – Kachchh is set aside. The delay of 59 days caused in preferring the appeal is condoned. Rule is made absolute accordingly. No order as to costs.