

(2023) 10 GUJ CK 0097

In the Gujarat High Court

Case No : Civil Application (For Condonation Of Delay) No. 1 Of 2023 In F/First Appeal No. 16733 Of 2023

Surabhiben Shreedharbhai Shinde

APPELLANT

Vs

Maheshbhai Naginbhai Devre

RESPONDENT

Date of Decision : 23-10-2023

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2023) 10 GUJ CK 0097

Hon'ble Judges : Gita Gopi, J

Bench : Single Bench

Advocate : Nishit A Bhalodi

Final Decision : Allowed

Judgement

Gita Gopi, J

1. The present application has been filed for condonation of delay of 181 days caused in filing the First Appeal.

2. Learned advocate for the applicant states that the delay of 181 days occurred in preferring the First Appeal, contradictory observation has been made in the present impugned matter, while the cognate matter being M.A.C.P. No.856 of 2013 came to be allowed, and thereby the applicant lady could not make provisions for court fees and other expenses to file the appeal in time and that has laid to delay in filing the First Appeal.

3. In the case of Collector, Land Acquisition, Anantnag and Another v. Mst. Katiji and Others reported in AIR 1987 SC 1353 it has been observed as under :-

"3. The legislature has conferred the power to condone delay by enacting Section 5 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on 'merits'. The expression "sufficient cause" employed by the legislature is adequately elastic to enable the

courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:-

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 con-doned 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 mala fides. 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."
4. Considering the averments made in the application and as the delay is sufficiently explained and in view of the facts and circumstances of the case, the delay of 181 days caused in filing the First Appeal is condoned.

The application is allowed.