

(1998) 12 GUJ CK 0007
In the Gujarat High Court
Case No : First Appeal No. 2416 of 1998

The State of Gujarat and Another	Vs	APPELLANT
Lomabhai Vasingbhai Chavda		RESPONDENT

Date of Decision : 19-12-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 3A

Citation : (1998) 12 GUJ CK 0007

Hon'ble Judges : S.K. Keshote, J

Bench : Single Bench

Advocate : Mukesh A. Patel, AGP, for the Appellant;

Final Decision : Dismissed

Judgement

S.K. Keshote, J.—This Appeal is filed by the State of Gujarat and Principal Chief Conservator of Forest, Vadodara, against the judgment and decree dated 22nd December 1995 passed in Regular Civil Suit No.391 of 1991 by Civil Judge (S.D.), Junagadh.

2. The plaintiff-respondent filed the suit aforesaid for declaration and permanent injunction and challenged the seniority list published on 30.1.1991. He also prayed for declaration that the said list may be declared to be null and void and inoperative. Prayer has also been made for direction to the defendants-appellants to prepare the seniority list after adopting the criteria of passing departmental examination in prescribed chances and the plaintiff-respondent may be assigned place in seniority accordingly in the seniority list. The plaintiff-respondent is a Government Officer of the Forest Department belonging to the category of Range Forest Officer. The suit of the plaintiff-respondent was decreed by the trial Court under the decree impugned in this Appeal and the operative part thereof reads as under:

"The suit of the plaintiff is partly allowed. The seniority list published on 30.1.1991 is declared as illegal, null and void and inoperative and hereby set

aside. Defendants are directed to prepare seniority list of the concerned employees within period of three months from the date of the decree considering the case of the plaintiff in its true and proper perspective and also after considering the objections filed by the plaintiff. Defendants do pay the costs of the plaintiff and bear their own."

3. A memorandum of Appeal which do not bear requisite and proper Court fee stamp prescribed therefore is not validly presented. Presentation of Appeal will not be a legal presentation if Court fees chargeable under the Court Fees Act are not paid at the time of presentation thereof. On the memo of Appeal, the appellants fixed the Court fee stamp of Rs.5/=. The learned counsel for the appellants does not dispute that this memo of Appeal is presented in this Court on deficit Court fee stamp. The deficit Court fees has been made good by appellants on 30th June 1998. In this Appeal, office has pointed out as many as nine objections, out of which two are material objections. I consider it to be appropriate to notice and reproduce the same in this judgment:

Objection No.4: Proper and full Court fee is not paid on memo.

Objection No.6: Beyond time by 775 days.

Despite of grant of sufficient time when all the office objections were not removed the matter was placed before this Court.

4. On the memo of Appeal, the appellants have to mention on the top of it, the valuation of the Appeal and the Court fees payable thereon. These two statements of fact are to be made so that the registry of this Court may be in a position to ascertain immediately as to what is the valuation of the Appeal and what amount of Court fees are to be paid on the memo of Appeal. Invariably, in almost all Appeals which are being filed before this Court either by State of Gujarat, Union of India, District Panchayats, Corporations or other statutory bodies or even private litigants, valuation of the Appeal as well as Court fees payable on the memo of Appeal is not mentioned. In absence of this important factual mention in the Appeal, registry of this Court is put in innumerable difficulties. In absence of mention of these two material factual ingredients on the top of the memo of Appeal, matters are being taken up by registry as defective matters and time is granted to the appellants firstly at the level of registry for removing office objections and then if despite of grant of time, the office objections are not removed, the matter is placed before this Court. The Court may either dismiss the Appeal for non prosecution or may grant time to remove office objections to the appellant. In case where the office objections are removed, then in that eventuality the registry has to check up the matter again and then it has to report whether the office objections are removed or not. If we go by this process and in fact, we are going by this process, then it is a matter of realization and experience that considerable and valuable time is being consumed both by registry and the Court in these matters. I fail to see how far we justify this wastage of time of the Court as well as of the registry. To keep

defective matters in cup-board and to report thereon for removal of objections and defects and listing them on board for orders before the Court and before registry, sufficient number of staff is posted and I have been given out time and again by registry that this Court is already short of staff. From time to time, I have called upon the persons from the registry to know why this Court is accepting defective Appeals and why this preliminary scrutiny is not made before permitting presentation of Appeal in the registry by the litigants/advocates. I am constrained to observe that no satisfactory reply has been put forth by registry in the matter. It is not a rule nor it could have been where there is an obligation on the Court and I may say, a legal obligation as to whether whatever short of papers are brought for presentation in the Court are to be accepted by registry. It is understandable that a dust-bin may not have a choice except to permit dumping of filthy garbage. If we go by this process, then permitting presentation of defective Appeals in registry of this Court in fact and substance and reality is as good as if throwing garbage in a dust-bin. A dust-bin can only be recipient of all sort of garbage but not the High Court. In the High Court only complete and valid Appeals have to be permitted to be presented. I am constrained to state here that the State of Gujarat, in particular, considers this Court to be a dust-bin which is apparent from this Appeal as well as hundreds of Appeals which it is filing everyday in the Court. Invariably, in all the Appeals presented in the Court by State of Gujarat, leaving apart other objections, two objections are always there, i.e. (i) proper and full Court fees are not paid on the memo of Appeal and (ii) Appeals are barred by limitation. It is understandable that defect of limitation is a defect which can only be cured or validated by Court after accepting the prayer made by the appellant for condonation of delay caused in filing of the Appeal, but if we look at the provisions as contained in Order XXXI, Rule 3A of the Civil Procedure Code, 1908, where a litigant is presenting a defective Appeal, barred by limitation, then it is legal obligation on the party concerned that the said Appeal should have been accompanied by an application supported by an affidavit setting forth the facts on which the appellant relies to satisfy the Court that it had sufficient cause for not preferring Appeal within such period. I have taken a view in some of the cases that this prayer for condonation of delay caused in filing of the Appeal either may be in the form of filing a separate application accompanied to the memo of Appeal or by incorporating prayer for condonation of delay caused in filing of the Appeal in the memo of Appeal itself and giving out therein necessary factual averments and the affidavit and grounds on which the delay is prayed to be condoned. Requisite Court fees payable on such an application has also to be put on the memo of Appeal in addition to what the prescribed Court fees on the memo of Appeal has to be paid for valuation of the Appeal. In case where the Appeal is barred by limitation, if it is not accompanied by an application supported by affidavit setting forth the grounds on the basis of which the appellant relies to satisfy the Court for condonation of delay caused in filing the Appeal or where such prayer is not incorporation in the Appeal itself and affidavit setting forth the grounds therein on the basis of which delay is prayed to be condoned, the registry is not under a

legal obligation to permit presentation of such Appeal.

5. Similar is the case with affixing prescribed Court fees on the memo of Appeal. If the requisite Court fees are not affixed on the memo of Appeal, registry is not under an obligation to accept the memo of Appeal. However, there may be exception and I consider it to make reference thereof in this judgment also. In a case where the appellant is not in a position to immediately pay the prescribed Court fees on the memo of Appeal or the full Court fees, the memo of Appeal should have been accompanied by an application u/s 149 of the Civil Procedure Code, 1908, praying therein for extension of time by the Court for payment of prescribed Court fees or to make good, deficiency of Court fees. This can also be permitted by incorporating necessary prayer in this respect in the memo of Appeal itself and to pay requisite Court fees on the memo prescribed for such an application. The memorandum of Appeal which is presented on deficit Court fees or on zero Court fees is invalid and incomplete Appeal. However, the Court has powers u/s 149 of the Civil Procedure Code, 1908, to allow payment of Court fees of deficit of Court fees subsequently and thus validate presentation but for this a prayer has to be made at the time of presentation of Appeal itself and in case Appeal is not presented on prescribed Court fees or Court fees paid thereon is deficit, then unless such an application or prayer is incorporated in Appeal, registry is not under any legal obligation to accept presentation of Appeal. So the rule should have been to accept only those Appeals which are complete in all respects but only in exceptional cases, registry may permit presentation of defective Appeals and that too on permission being taken by the litigant from the Court and on grant thereof. In case, this is made a rule, registry will not unnecessarily carry any burden with it. The load of work which is not its own creation but it is being created because it is permitting filing of defective Appeals by litigants. Otherwise also, I fail to see how it can be accepted and believed that the State Government and all other litigants are not in a position to make payment of Court fees. A litigant who comes for filing of the Appeal in this Court leaving apart the question of payment of professional fees of advocate, will not in any manner refuse to bear these expenses. Contrary to it, what people say is that a litigant will atleast bring money for discharging of his obligation of payment of necessary expenses of filing of the Appeal.

6. Be that as it may, so far as the State of Gujarat is concerned, which is the biggest litigant in this Court, it is difficult to believe that it is not in a position to pay prescribed Court fees on the memo of Appeal on the date on which the same it to be presented in the Court. It cannot be said nor it can be believed that the State Government is an indigent person or it is poor person or it has financial constraints to the extent where it is not in a position to make immediate payment of prescribed Court fees on the memo of Appeal. I have seen and in fact everyday, I am seeing that in almost all the Appeals which are being filed by State of Gujarat, the prescribed Court fees are not paid. So the State of Gujarat is the only litigant which presents hundreds of defective Appeals in the Court and it is solely responsible to a considerable extent to increase workload of registry

by presenting defective Appeals. Pendency of defective cases of this nature in this Court is quite alarming and the reason is this prevalent practice here to accept incomplete and defective presentation of Appeals.

7. In this Appeal, though the deficit of Court fees has been made good, there is no prayer for condonation of delay of 775 days caused in filing of this Appeal. The learned counsel for the appellants prays for time to file Civil Application for condonation of delay, but I do not find any justification or reasonableness in this prayer made by the appellants. This Appeal was filed on 8th May 1998 and on that day, it was already barred by 775 days. When the appellants have filed this Appeal after delay of more than two years, what justification they have not to file application for condonation of delay alongwith the Appeal itself. That shows how casually and negligently the litigations of the State of Gujarat are being taken by its officers and employees. On the record of this Appeal, I do not find any explanation, good, bad or indifferent for this inordinate delay of 775 days caused in filing of this Appeal. Only on this ground, this Appeal deserves to be rejected.

8. I have also touched the merits of the matter for my own satisfaction. The learned counsel for the appellants laid much emphasis on the ground that the seniority list published on 31.1.91 has been quashed though the persons in the seniority list have not been impleaded as party to the suit. I do not find any merits in this contention of the learned counsel for the appellant and the reason is very obvious. None of the alleged affected persons have come up before this Court. In case what the learned counsel for the appellants presented and projected before this Court would have been correct or would have some force, then the aggrieved and affected persons would have certainly made a grievance before the trial Court or the appellate Court as the case may be or before this Court. In absence of any grievance made by the alleged affected persons, I do not consider it to be appropriate and fit case where the judgment and decree of the learned trial Court should be quashed and set aside on this ground alone.

9. In the result, this Appeal is dismissed as barred by limitation. Before parting with this judgment, I consider it to be appropriate that this judgment may be placed for perusal of the Hon''ble the Chief Justice and may also be circulated to all the Hon''ble Brother Judges.