

(1976) 03 GUJ CK 0025

In the Gujarat High Court

Case No : Civil Revision Application No. 718 of 1975

Vasava Hiraben

APPELLANT

Vs

Ishwar Bharti Karsanbharti Gauswami and Another

RESPONDENT

Date of Decision : 17-03-1976

Acts Referred:

Constitution of India, 1950 — Article 227
Motor Vehicles Act, 1939 — Section 110

Citation : (1976) ACJ 464 : AIR 1977 Guj 146 : (1977) 18 GLR 467

Hon'ble Judges : P.D. Desai, J

Bench : Single Bench

Advocate : M.C. Bhatt, for the Appellant; G.T. Nanavati, for the Respondent

Judgement

1. An unfortunate and illiterate widow belonging to a scheduled tribe, whose husband died in a motor vehicle accident, has been driven to this Court because her petition claiming compensation has been rejected on the ground that it was barred by limitation and that no sufficient cause for condonation of delay was made out. The circumstances (to be presently mentioned) under which the delay was occasioned speak for themselves and it is somewhat strange and agonizing that the second opponent (Gujarat State Road Transport Corporation) should have shown such determined diligence in setting up the plea of limitation under those circumstances against a person like the Petitioner.

2. In the course of an accident which occurred on November 15, 1972 the husband of the petitioner was killed. The vehicle involved in the accident is owned by the second opponent. The petitioner filed a claim petition before the Motor Accident Claims Tribunal, Broach on March 17, 1973, that is to say well within the, period of limitation. It appears that the petitioner had engaged a junior advocate of less than seven years' standing to take various preliminary steps in the proceedings and that a senior advocate practicing at Baroda was to appear on her behalf at the hearing of the matter. However, when the said petition came on for hearing before the Tribunal on June 18, 1974, the advocate

from Baroda could not remain present and the petitioner was represented by the junior advocate. The petitioner herself was also not present because she was ill. During the course of the hearing of the said petition in the chamber of the presiding officer of the Tribunal, several objections were raised on behalf of the second opponent as to the maintainability of the petition on certain technical grounds. It appears that at that stage it was suggested by the Tribunal to the advocate appearing on behalf of the petitioner that the petition might be withdrawn with permission to file a fresh petition as the defects were formal, The advocate of the petitioner, however, expressed his apprehension that in that case the question of limitation might arise and he requested that time might be granted to him to consider the matter, especially because a senior advocate from Baroda was not present. The Tribunal, however, expressed the view that the defects were of such a nature that the petition would have to be eventually dismissed and that no different result was likely to ensue even if time was granted. Besides, the question of limitation could be taken care of. Ultimately therefore, the advocate withdrew the petition on the same day with permission to file a fresh petition though he was, on his own admission, not in a position to appreciate the true legal position. Be it noted that the permission was granted subject to the question of limitation. It appears that during the course of the hearing, some representation was also made on behalf of the second opponent by its advocate that the claim might be mutually settled around Rs. 5000/- by negotiations between the parties if and when a fresh petition was filed and this factor also appears to have weighed in the matter of withdrawal of the petition. These facts emerge from an affidavit filed by the concerned advocate as well as from his cross-examination in the course of the proceeding-giving rise to this revision application.

3. The fresh petition came to be filed thereafter on July, 19, 1974. This petition was obviously beyond the period of limitation and the petitioner, therefore, filed an application for condonation of delay under S. 110-A (3) of the Motor Vehicles Act 1939 The application was supported by the affidavit of the advocate who appeared on behalf of the petitioner in the earlier proceeding and to the contents of which reference has been made earlier. It was also supported by the affidavit of the petitioner herself in which she stated that she was indisposed on or about June 18, 1974 and that between June 18, 1974 and July 18, 1974 she was extreme" weak and that on that account she could not file the second petition till July 19, 1974. The second opponent, however, stoutly resisted the application for condonation of delay. No counter affidavit was filed but both the deponents were cross-examined on its behalf. The advocate stood the cross-examination well but in the course of- the cross-examination of the petitioner, the following information was elicited from her:

"I had not told my advocate that I was ill during the last month prior to the filing of this application. I had gone to Baroda to inquire about my application -pending in this Court. I have not taken any medical treatment. I had not fallen sick during the period of about one month prior to the filing of this application."

The Tribunal then heard the parties and rejected the application for condonation of delay and dismissed the claim petition. It is this order refusing to condone delay in filing the second petition, which is under challenge in the present petition.

4. Now, the Tribunal has held that the petitioner was bound to explain the whole of the period of delay and that since that was not done, it had "no jurisdiction" to condone the delay in this case. In this connection, it might be noted that the Tribunal accepted the contention of the petitioner that the delay up to June 18, 1974 was satisfactorily explained because till that date the original petition was pending in the Court. The Tribunal, however, found that there was no material on record to satisfactorily explain the delay between the period June 18, 1974 and July 19, 1974, that is, the period between the date of withdrawal of the original petition and filing of the fresh petition. The Tribunal further found that, the petitioner had "made a wrong statement in her affidavit to the effect that from 18-6-1974 to 19-7-1974 she was ill and, therefore, could not see her advocate" "because her version in the cross-examination was that she did not tell her advocate that she was ill during the last one month prior to the filing of her application. Besides, she had also admitted in her cross-examination that she had not fallen ill during the period of one month prior to the filing of the application and had not taken medical treatment. According to the Tribunal it could not, therefore, be held that the delay of about 81 days from June 18, 1974 was occasioned on account of the illness of the petitioner. In view of these findings, the Tribunal rejected the application.

5. Before dealing with the matter on merits, it is worthwhile to refer to the observations of the Supreme Court in *The Trustees of Port of Bombay Vs. The Premier Automobiles Ltd. and Another*, in respect of such plea of limitation raised by public authorities. It was a case of a petty claim of Rs. 1147,42 made by a commercial man against the Bombay Port Trust (bailees) for a missing article or its value by way of damages and the suit was ultimately found to have been instituted a little over ten days beyond the period of limitation. The Supreme Court noted that the defendant had dissuaded the plaintiff in that case from instituting the suit by its promises of search for the lost article but had finally pleaded helplessness. When the plaintiff filed the suit, however, the plea of limitation was raised and it was stoutly persisted up to the highest Court. The Supreme Court said in the context of these facts (in paragraph 64):-

"We are of the view, in reiteration of earlier expression on the same lines, that public bodies should resist the temptation to take technical pleas or defeat honest claims by legally permissible but marginally unjust contentions. including narrow limitation it is doubtful morality to non-suit solely on grounds of limitation, a plaintiff who is, taken in by seemingly responsible representation only to find himself fooled by his credibility public institutions convict them selves of untrustworthiness out of their own mouth by resorting to such defences." These observations are required to be borne in mind by every public

authority, more particularly such public authorities like the second opponent who have been held to be State within the meaning of Art. 12 of the Constitution of India. The injunction contained in the first part of these observations which were made in a purely commercial cause applies with still greater force, in a case like the present. The law relating to compensation in motor accident cases has been enacted by the State for the benefit of the dependants of the unfortunate victims and it is surprising that when it comes to the implementation of the said law, the limbs of the State should try to defeat a claim not on merits but on technical pleas such as "narrow limitation". One could only hope that bearing in mind the injunction of the Supreme Court in the abovementioned case, the second opponent would desist from raising such pleas in future at least in cases" where the delay is not inordinate. But that is not all. The thrust of the sharp criticism contained in the second part of those observations relating to the conduct of public authorities, who lure an unwary litigant into a particular belief and then turn round and take up such defences as limitation, must as well be borne by the second respondent in this case, what transpired before the Tribunal on the day of the withdrawal of the original petition has been set out earlier. The affidavit made by the petitioner's advocate with regard to the events of that day has remained uncontroversial and in his testimony he has not been shaken. Having regard to the representation which appears- to have been made on behalf of the second opponent regarding the settlement of the claim in the event of a fresh petition, the defence now raised must evoke the same comment as was made by the Supreme Court in the last part of the extracted portion of the decision in Trustees Bombay Fort's case (supra).

6. Coming now to the merits of the matter, it is true that there is delay in filing the fresh petition. However, proviso to Section 110-A (3) confers wide discretion on the Tribunal to entertain the claim petition after the expiry of the period of limitation "if it is satisfied that the applicant was prevented by sufficient cause from making the application in time." The question is whether in the present case in refusing to exercise this judicial discretion, the Tribunal has acted bearing in mind the statutory perspective and relevant legal principles and after viewing all matters which required consideration or whether it has acted arbitrarily without regard to all relevant factors, Reference may be made in this connection to Ajantha Transports (P) Ltd., Coimbatore Vs. T.V.K. Transports, Pulampatti, Coimbatore District, , wherein it has been held that if a ground which was irrelevant was taken into account with others which were relevant or a relevant ground which existed was unjustifiably ignored, it could be said to be a case of jurisdictional error which could be reviewed under S. 115, Civil Procedure Code, Similarly, in Sarpanch, Lonand Grampanchayat Vs. Ramgiri Gosavi and Another, , it has been observed that if the discretion in the matter of condonation of delay has not been judicially exercised and if the exercise of discretion is capricious or perverse or ultra vires, the High Court may interfere even under Art. 227 of the Constitution. It would thus appear that if the impugned decision is found to have been arrived at in disregard of the statutory perspective, well settled legal

principles and relevant matters, the decision would be ultra vires and there would be a jurisdictional error resulting in manifest injustice and this Court will have both the power and duty to interfere by reviewing the exercise of such discretion even in a proceeding under S. 115, CPC or Article 227 of the Constitution.

7. The statutory perspective of the power of the Court to condone delay in institution of proceedings on sufficient cause being shown and the principles regulating the exercise of such power are also well settled. In *Sarpanch, Lonand Grampanchayat Vs. Ramgiri Gosavi and Another*, in the context of proviso to S. 20(2) of the Minimum Wages Act, 1948, the Supreme Court observed as follows (in Para 3):

"This discretion like other judicial discretion must be exercised with vigilance and circumspection according to justice, commonsense, and sound judgment. The discretion is to know through. law what is just, see *Keighley's case* (1609) 10 CR 139 : 77 ER 1136."

was further observed that the words "Sufficient cause" which occurred in S. 5 of the Limitation Act had received liberal construction and that similar interpretation should be placed upon those words in cognate statutory provisions like the one under construction in that case. In this connection the following passage from the decision of the Madras High Court in *Krishna v. Chathappan* (1890) ILR 13 Mad 269 (which had earlier received approval in *Ramlal, Motilal and Chhotelal Vs. Rewa Coalfields Ltd.*, was cited with affirmance:

"We think that S. 5 gives the Courts 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 fides is imputable to the appellant".

In *Union of India (UOI) Vs. Ram Charan and Others*, certain pertinent observations are made with regard to the nature of proof required for establishing the suggested "sufficient cause" in a proceeding under O. XXII Rule 9, CPC for setting aside abatement and those observations would apply with equal force even to any other proceeding where such cause is to be established. It was there observed (at page 219):-

"The provisions of the Code are with a view to advance the cause of justice. Of course, the Court, in considering whether the appellant has established sufficient cause for his not continuing the suit in time or for not applying for the setting aside of the abatement within time, need not be over strict in expecting such proof of the suggested cause as it would accept for holding certain fact established, both because the question does not relate to the merits of the dispute between the parties and because if the abatement is set aside, the merits of the dispute can be determined, while, if the abatement is not set aside, the appellant is deprived of his proving his claim on account of his culpable

negligence or lack of vigilance. This, however, does not mean that the Court should readily accept whatever the appellant alleges to explain away his default. It has to scrutinise it and would be fully justified in considering the merits of the evidence led to establish the cause for the appellant's default in applying within time for the impleading of the legal representatives of the deceased or for setting aside the abatement".

This very aspect has been emphasised by M. P. Thakkar J. in *Karim Abdulla v. Bai Hoorbai* (1975) 16 Guj LR 835 while laying down certain guidelines in the matter of condonation of delay. It was there observed that Courts must always bear in mind that whereas refusal to condone delay might result in injustice by a meritorious matter being thrown out without trial, condonation of delay would at the highest result in decision of the matter on merits. Furthermore, no litigant ordinarily stands to berifit by instituting a proceeding beyond time and there is no presumption that the delay has been occasioned deliberately or on account of culpable negligence or that there was want of bona fides. The presumption, if any, would be just the other way round. It is true that in *Ramlal's case* (supra) it was held that a party seeking condonation of delay will have to show sufficient cause not only for not instituting the proceeding on the last day but also to explain the delay made thereafter day by day. However, as pointed out in *Karim's case* (supra) pedantic and unpragmatic approach should not be made to the matter and, as observed in *Rameharan's case* (supra), the Court need not be over strict in expecting proof of the suggested sufficient cause. It is of paramount importance that the Courts should be aware that since this discretion has to be exercised with circumspection according to justice, commonsense and sound judgment and for advancing substantial justice, all factors including the status and background of the parties, the previous history if any, of the litigation and the conduct of the parties therein up to date, the period of and circumstances leading to the delay and the probity of the suggested cause for delay, the quality of legal assistance, guidance and advice received by the defaulting litigant are all matters which amongst others must enter into consideration and the final decision must be arrived at in the over-all light of all the relevant circumstances. It is against this background that we must approach the present case.

8. It cannot be overlooked, in the first place, that the petitioner is an illiterate widow belonging to a scheduled tribe coming from an interior region and that the question of condonation of delay has to be judged in the context of such a person. Apart from the fact that there is no presumption as regards the delay being deliberate or mala fide, in the case of such a person it would not be unreasonable to assume that the delay might have been caused more on account of want of proper guidance and appreciation of the consequences. In the next place, there is inherent evidence on the record of the case to show that the petitioner has been vigilant and that there is no want of bona fides on her part. She presented the first petition well within the period of limitation and made the same claim which she made in the second petition. The first petition had to be withdrawn under the circumstances mentioned above and a part of the delay in

presenting the second petition has been found to have been occasioned and satisfactorily explained on account of the pendency of the first petition. It is difficult to appreciate as to how, in the circumstances aforementioned, it could be reasonably concluded that there was negligence or inaction or want of bona fides on her part so far as the remaining period is concerned. Such a view could not possibly have been arrived at if an integrated view of all the circumstances of the case was taken. In the last place, the Tribunal's holding that the remaining period was not satisfactorily explained is based upon a misreading of her affidavit and oral testimony. The Tribunal, as earlier stated, found that the petitioner had made a wrong statement in her affidavit to the effect that from 18-6-1974 to 19-7-1974 she was ill. This finding was arrived at *be. cause*, in the opinion of the Tribunal, her version in the cross-examination was different, namely, that she was not ill during the last one month prior to the filing of the second petition and had not taken any medical treatment. Now, if we read the affidavit of the petitioner, it would appear that her case therein set out in substance was that she was extremely weak on account of illness during the relevant period and that she could not, therefore file the second petition up to July 19, 1974. It has to be borne in mind that the fact that the petitioner was ill on June 18, 1974 is borne out even from the deposition of her advocate and that fact has not been challenged even in her cross-examination. The possibility cannot be ruled out, therefore, that she might be suffering from extreme weakness for sometime after that illness. She might not have been actually ill but might have been suffering from the aftereffect of her illness and that is really what she has stated in her affidavit. I fail to appreciate as to how this version is inconsistent with her testimony where she has deposed that she was not actually ill during that period. It cannot be overlooked that the petitioner is a rustic and illiterate person and in appreciating her testimony the Court cannot apply the same standards as might be applied in dealing with a sophisticated witness. The difference between "illness" and "weakness" might not have been so much present to her mind when she was under cross-examination, In my opinion, therefore, having regard to all the circumstances of the case, the Tribunal misdirected itself in law in not condoning the delay, in the present case and its decision is vitiated by a jurisdictional error inasmuch as the correct principles have not been applied and the material evidence on record has been misread. Having regard to an overall view of all the material circumstances of the case, in my judgment, no conclusion other than that there was sufficient cause for the delay in filing the petition: could have been reasonably arrived at and in view of all the relevant facts and circumstances, the delay ought to have been condoned.

9. In the result, the revision application succeeds and is allowed. The delay in filing the claim petition is condoned and the claim petition is ordered to be restored to the file of the Tribunal. The Tribunal is directed to take up the claim petition for hearing on an expeditious basis. There will be no order as to costs in the circumstances of the case.

10. Petition allowed