

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 16984 of 2021****FOR APPROVAL AND SIGNATURE:****HONOURABLE DR. JUSTICE ASHOKKUMAR C. JOSHI**

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	NO
2	To be referred to the Reporter or not ?	YES
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

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PASCHIM GUJARAT VIJ COMPANY LTD.

Versus

SHANTUBEN SANJAYBHAI MER

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Appearance:

MR DIPAK R DAVE(1232) for the Petitioner(s) No. 1,2

NOTICE SERVED for the Respondent(s) No. 1,2,3,4,5

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CORAM: HONOURABLE DR. JUSTICE ASHOKKUMAR C. JOSHI**Date : 04/02/2022****ORAL JUDGMENT**1. *Rule.*

2. This petition, under Article 227 of the Constitution of India, is filed by the petitioner – an electricity company against an order dated 31.08.2021, passed by the learned Principal District Judge,

Amreli in Civil Misc. Application No. 53 of 2019 for condonation of delay of 132 days caused in preferring the regular civil appeal against the judgment and decree dated 01.05.2019 passed by the learned Principal Senior Civil Judge, Amreli in Special Civil Suit No. 81 of 2014, whereby, the said suit, filed by the respondents herein, came to be partly allowed.

3. Though served, none had put in appearance on behalf of the respondents and accordingly, the Court proceeded with the matter.

4. Heard, learned advocate Mr. Dipak R. Dave for the petitioner. He submitted that the petitioner is an electricity company run by the government and accordingly, it has to follow due procedure for opinion and approval from the different departments concerned, in which some time is elapsed and in the circumstance, such a delay has been occurred in presenting the appeal before the first appellate Court. Further, he submitted that the delay is of only 132 days, and accordingly, learned Judge ought to have considered the delay condonation application and would have condoned the delay in preferring the appeal, moreso when, there was no reply/written objections filed by the other side.

4.1 The learned advocate for the petitioners has further submitted that another count on which such application for condonation of delay was rejected is non-joinder of necessary parties in the said application inasmuch as, in the said application, original plaintiff Nos. 6 and 7 were not joined, however, he submitted that the suit was filed through the legal heirs of the deceased and the learned Judge has failed to

appreciate such a factual position.

4.2 Making above submissions, it is urged that this writ petition may be allowed in the interest of justice and delay caused in preferring the appeal, as aforesaid, may be condoned.

5. Regard being had to the submissions made and considering the averments made in the present writ petition as also the material placed on record, it appears that the respondents had filed the above referred special civil suit to recover Rs.10 lakh towards compensation from the petitioner herein. The said suit came to be allowed in part in favour of the respondents herein, against which, the present petitioner desires to file an appeal, however, since there was delay of 132 days, the petitioners preferred Misc. Civil Application No. 53 of 2019 for condonation of delay. The said application came to be rejected by the impugned order dated 31.08.2021, being aggrieved of which, the petitioners are before this Court.

5.1 It is submitted by the learned advocate for the petitioner that the petitioner being a government company, approval and opinion at different levels are required to be taken and in such a course, the delay has occurred. Accordingly, if the chronology of events is seen, it can be summarized as under:

- i) on 01.05.2019, the learned trial Court passed the decree;
- ii) on 02.05.2019, certified copy was applied for;
- iii) on 14.05.2019, certified copy was received and on same day, learned advocate forwarded the same to the Deputy Executive Engineer ;
- iv) on 20.05.2019, Deputy Executive Engineer forwarded

proposal along with necessary papers to the office of Executive Engineer;

- v) on 23.05.2019, Executive Engineer forwarded the case papers to the Superintending Engineer;*
- vi) on 30.05.2019, Superintending Engineer forwarded the case papers along with documents to the Chief Engineer;*
- vii) the Chief Engineer, in turn, forwarded the cases papers to the Corporate Office at Rajkot i.e. Company Secretary;*
- viii) on 05.07.2019, the competent authority decided that appeal is required to be filed before the higher forum;*
- ix) by letter dated 06.07.2019, the above-said decision was conveyed to the Chief Engineer with a copy to the Deputy Engineer;*
- x) on 15.07.2019, the Deputy Engineer instructed the concerned advocate and handed over the papers for preferring the appeal.*
- xi) on 27.09.2019, the concerned advocate taking some time, filed the appeal.*

5.2 Thus, it is not the case that after the judgment and decree was pronounced by the learned trial Court concerned, the petitioner went into the deep slumber and then suddenly woke up one fine morning with an idea to challenge the said decree by preferring an appeal. The above chronology is suggestive of the fact that immediately after the judgment and decree was pronounced, certified copy thereof was applied for and after getting the same, procedure for necessary approval was started, without any further delay.

5.3 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.

5.4 Having heard and considering the material on record, more particularly, the chronology of events, following aspects have been weighed with the Court:

- i) *the petitioner is an electricity company run by the government and accordingly, is a public entity;*
- ii) *delay in preferring the appeal is of only 132 days;*
- iii) *immediately after the judgment and decree is passed, the procedure for necessary approval was started;*
- iv) *besides, the application for condonation of delay was not objected by the respondents herein and no reply/ written objections appear to have been filed against the delay condonation application. It is pertinent to note here that notice of this writ petition is also served upon the respondents and here also, the respondents have chosen not to appear before this Court;*
- v) *sufficient cause appears to have been shown by the petitioner for delay;*
- vi) *as per the catena of decisions of the Apex Court, "sufficient cause" in Section 5 of the Limitation Act must receive a liberal construction so as to advance the substantial justice and generally, delay in preferring the appeals are required to be condoned in the interest of justice.*

5.5 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-jubilation of 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 lies 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 dependant 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)

5.6 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 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.

5.7 Another ground on which the learned first appellate Judge has rejected the application for condonation of delay is non-joinder of necessary parties viz. original plaintiff Nos. 6 and 7, who happen to be the father and mother of original plaintiff namely deceased Sanjaybhai Popatbhai Mer. It may not be out of place here to mention that the suit was filed against the petitioner - electricity company for compensation on sad demise of Sanjaybhai Popatbhai Mer - the original plaintiff, who had died due to electrocution. A perusal of the array of parties reveals that original suit was preferred through the legal heirs of the deceased Sanjaybhai Popatbhai Mer, including original plaintiff Nos. 6 and 7. Under the circumstances, when the respondents have chosen not to resist the said application, with a view to fend off multiplicity of proceedings, such a curable technicality ought to have been avoided.

5.8 Thus, in the totality of the facts and circumstances of the case on hand, this Court is of the opinion that the matter merits favourable consideration.

6. In the backdrop as aforesaid, this writ petition succeeds and is allowed accordingly. The impugned order dated 31.08.2021 passed by the learned Principal District Judge, Amreli in Civil Misc. Application No. 53 of 2019 for condonation of delay is hereby set

aside and delay of 132 days caused in preferring the regular civil appeal against the judgment and decree dated 01.05.2019 passed in Special Civil Suit No. 81 of 2014 is hereby condoned. Rule is made absolute accordingly. However, in the facts and circumstances of the case there shall be no order as to costs.

[A. C. Joshi, J.]

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