



AIR 1990 GUJARAT 80
GUJARAT HIGH COURT
P. R. GOKULAKRISHNAN ,
C.J. and P. M. CHAUHAN , J.

* *Against order of A.P. Ravani, Judge, in Civil Appln. No. 39 of 1989 in First Appeal No. 91 of 1981, D/-10-2-1989 (Guj).*

Judgement

Letters Patent Appeal No. 61 of 1989, D/- 1 - 3
- 1989

Ahmedabad Electricity Company Ltd
Appellants v. Electricity Mazdoor Sabha,
Ahmedabad and another Respondents

Limitation Act (36 of 1963), S.5 - Condonation of delay - Court should take pragmatic view - Inclination must be towards excusing delay rather than scuttling proceedings - Suit between workers union and management - Delay in filing appeal - Plea by Secretary, Workers Union that delay was due to absence of knowledge of decree - Secretary elected much after institution of suit - Secretary not arrayed as party in suit - Genuine attempt by Secretary to file appeal after coming to know of decree - Held there was sufficient ground to condone delay.

(Paras 8 9)

Cases Referred	Chronological Paras
1988(1) Guj LH (UJ) 31	8
AIR 1987 SC 1353	8
AIR 1985 SC 1 : (1985) 1	8
SCC 163 : 1986 Lab IC 392	
AIR 1983 SC 355 : (1983) 2	8
SCC 132	
AIR 1981 SC 1786	8
AIR 1976 SC 1177 : 1976	8
Lab IC 777	
(1912) ILR 35 Madras 1 : 21	8
Mad LJ 1	

J.M. Thakore Advocate General with K.S. Nanavati, for Appellant; A.K. Clerk, for Respondents.

1. GOKULAKRISHNAN, C. J.:—This Letters Patent Appeal is against the order passed by the learned single Judge, condoning the delay of 290 days in preferring the First Appeal against the judgment and decree of the City Civil Court passed in Civil Suit No. 1315 of 1983. The operative portion of the order passed by the City Civil Judge is as follows:

"The suit is decreed. The 1st defendant and its members are hereby permanently restrained from holding 'Dharna', ghearoing officers, servants and agents of the plaintiff or resorting to any form of vilence at (i) Ahmedabad Electricity House, Relief Road, Lal Darwaja. Ahmedabad, (ii) old power House and Jubilee House both situated at Shahpur, Ahmedabad-1 and (iii) the manufacturing plant i.e. generating power station situated at Sabarmati, Ahmedabad-5. They are restrained from entering into the said premises for any purpose except for the due discharge of their legitimate duties. They are also restrained from causing any damage or loss or destruction or in any way dealing with or interfering with the machinery, installations, transformers, sub-stations, furniture, fixtures, records and all the every other property, movable and immovable of the plaintiff-Company in any manner whatsoever. There shall be no order as to costs. The decree shall be drawn in the above terms. Order accordingly."

Aggrieved by the said decree the 1st respondent has preferred First Appeal No.91 of 1989, and also filed Civil Application No. 39 of 1989, praying to condone the delay of 290

@page-Guj81

days. The application for condonation of delay was filed with reasons stated therein. Affidavit-in-reply was filed by the appellant herein, refuting the averments made in the petition filed, with a prayer for condoning the delay. The learned single Judge, condoned the delay, observing :

"Sufficient cause shown. Delay condoned. Rule made absolute accordingly."

The learned Advocate General, who is appearing for the appellants, elaborately argued as to how such an order cannot be sustained and as to how the learned single Judge has not exercised his judicial discretion before condoning the delay. Mr. Clerk, the learned counsel appearing for the respondents, on caveat, cited number of authorities to show that the order passed by the learned single Judge in condoning the delay is a discretionary order and the same cannot be interfered with at the letters Patent Appeal stage.

2. The learned counsels appearing for the respective parties herein agreed to that the Letters Patent Appeal may be admitted and finally disposed of today itself since all the arguments have been advanced as if it is final hearing of the Letters Patent Appeal. In view of this consensus arrived at between the parties, we heard the learned Advocates of both sides fully and after admitting the Letters Patent Appeal, we are passing the following order as final order in the Letters Patent Appeal.

3. In the civil application for condoning the delay, which is Civil Application No. 39 of 1989, it is stated by the 1st respondent herein that he was elected as a General Secretary of the Union in the year 1988, that he was not aware of Civil Suit No. 1315 of 1983 pending before the City Civil Court at Ahmedabad, that he was not aware of the judgment being delivered in that suit on 9-2-1988, that the earlier General Secretary Shri Rathod had not apprised the

present General Secretary about the pendency of such a suit and that he came to know only when a letter was received from the appellant herein in reply to certain correspondence sent by the 1st respondent. Hence, according to the 1st respondent, delay has been caused in coming forward with the first appeal against the judgment and decree in Civil Suit No. 1315 of 1983.

4. The contention of the 1st respondent in the condonation petition was refuted by the appellant herein in the affidavit-in-reply filed by Dy. Manager Shri P.K. Desai. According to the appellant, the present General Secretary was elected as early as 1986, that it is not correct to state that Mr. S.B. Patel was elected only in the year 1988, that subsequent to the election, Shri S.B. Patel has appeared on behalf of the Electricity Mazdoor Sabha in number of cases and that it is a clear misstatement on the part of Shri S.B. Patel to say that he was elected as a General Secretary of the applicant-Union at the election held in the year 1988. It is further averred that such a statement has been intentionally made with a mala fide motive to mislead this Court. No doubt, in this affidavit-in-reply, the appellant has also stated that Shri S. B. Patel is holding the portfolio of the General Secretary of the applicant-Union since 1986 and has continued as such after 1988 election. The appellant has finally stated that Shri S.B. Patel and the applicant-Union were aware about the pendency of the civil suit and the averment made in the application for condonation of delay as if Shri S.B. Patel does not know about the pendency of the suit is false and has been made with a mala fide intention to get the delay condoned. In the light of these averments, it was urged before the learned single Judge that the application for condonation of delay may be dismissed. The learned single Judge stating that sufficient cause is shown, condoned the delay.

5. The learned Advocate General appearing for the appellant contended that in the absence of any reasoning given by the learned single Judge in respect of the affidavit-in-reply filed by the appellant herein, the matter has to be remanded to the learned single Judge for the purpose of applying his mind with regard to the averments on record. The learned Advocate General also stated that it will be open for the respective parties even to substantiate their case before the learned single Judge after it is remanded. According

@page-Guj82

to the learned Advocate General, there was absolutely no evidence before the learned single Judge to show that the General secretary Shri S.B. Patel was ignorant of the pendency of the Civil Suit No. 1315 of 1983. Such an ignorance, according to the learned Advocate General, is not established and hence, the learned single Judge is not correct in observing that sufficient cause is shown for condonation of delay.

6. It is next argued by the learned Advocate General that on the state of evidence before the learned single Judge, he should not have excused the delay. It is strenuously contended by the learned counsel appearing for the appellant that Shri S.B. Patel, General Secretary, has misled the Court by purposely making an allegation that he was elected in the year 1988 only as General Secretary. According to the learned Advocate General, if only the learned Judge has read the affidavit in reply, it would have been clear that Shri S.B. Patel, General Secretary, was elected as early as 1986 and in 1988, he was reelected to the same post. If the learned single Judge has considered this fact, definitely he would not have excused the delay. Finally, the learned Advocate General contended that the condonation of delay is, no doubt, a discretionary order, but such a discretionary order must conform to certain norms and it must be a discretionary judicial

order. In as much as the learned single Judge has not applied his mind to the facts of the case and simply passed a one line order condoning the delay, such an order has to be set aside and the matter has to be remanded to the learned single Judge for considering the matter afresh.

7. Mr. Clerk, the learned counsel appearing for the respondents, cited various decisions to show that the discretionary order in excusing the delay cannot be interfered with and also the fact that it is only an order excusing the delay in preferring the appeal and submitted and that in any event the order passed by the learned single Judge cannot be interfered with at this Letters Patent Appeal state.

8. From the petition and the affidavits we have referred above, it is clear that the suit came to be filed much earlier to the election of Mr. Patel in the year 1986. It is also clear from the facts that Mr. Patel, General Secretary, was reelected in the year 1988. The learned single Judge, who had before him the petition and the affidavit-in-reply, would have definitely looked into those matters and has passed the order after applying his mind. It would have been better that some discussions were there made before such an order was passed. But that itself would not give a handle to the appellant herein to contend that the learned single Judge has not at all considered the affidavit-in-reply and other facts available before him. In this connection, we can usefully refer to the judgment in the case of *Shah Babulal Khimji v. Jayaben*, reported in AIR 1981 SC 1786. In that case, the Supreme Court, referring to the decision rendered as early as 1912 in the case of *T.V. Tulrajam Row v. M.K.B.V. Alagappa Chettiar*, reported in (1912) ILR 35 Madras 1, observed :

"The trial Judge being a senior Court with vast experience of various branches of law occupying a very high status should be trusted to pass discretionary or interlocutory orders with due

regard to the well settled principles of civil justice. Thus, any discretion exercised or routine orders passed by the trial Judge in the course of the suit which may cause some inconvenience or, to some extent, prejudice one party or the other cannot be treated as a judgment; otherwise the appellate court (Division Bench) will be flooded with appeals from all kinds of orders passed by the trial Judge. The courts must give sufficient allowance to the trial Judge and raise a presumption that any discretionary order which he passes must be presumed to be correct unless it is ex facie legally erroneous or causes grave and substantial injustice."

We do not think that these observations mutatis mutandis apply to the facts of the present case, but the principles enunciated in it would squarely apply to the present case since the discretionary order passed by the learned single Judge is in respect of condoning the delay for the purpose of entertaining the appeal, which would have otherwise been

@page-Guj83

dismissed on the ground of limitation. In cases of condoning the delay, the Court must be leaning towards allowing the petition rather than scuttling the parties from litigating the matter on merits. In the decision in the case of Collector, Land Acquisition, Anantnaq v. Katiji, reported in AIR 1987 SC 1353, the Supreme Court had occasion to consider the question of excusing the delay and has said that the Court should adopt a liberal approach in such matters. The Supreme Court in this case observed :

"The doctrine of equality before law demands that all litigants including the State as litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a stepmotherly treatment when the State is the applicant praying for condonation of delay. In fact on account

of an impersonal machinery and the inherited bureaucratic methodology imbued with the note-making, file pushing, and passing on the buck ethos, delay on part of the State is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant non grata status. So also the approach of the Courts must be to do evenhanded justice on merits in preference to the approach which scuttles a decision on merits.

In the decision in the case of State of Punjab v. Shamlal Murari, reported in AIR 1976 SC 1177, The Supreme Court has observed (para 9) :-

"Discretionary exercise of power by a Court cannot be lightly interfered with by a Court of appeal x x x "

In the decision in the case of Sital Prasad Saxena (Dead) by LRs. v. Union of India reported in (1985) 1 SCC 163: (AIR 1985 SC 1), the Supreme Court dealing with the delay in bringing the LRs. of the deceased appellant on record, observed:

"Once an appeal is pending in the High Court, the heirs are not expected to keep a constant watch on the continued existence of parties to the appeal before the High Court, which has a seat far away from where parties in rural areas may be residing. And in a traditional rural family the father may not have informed his son about the litigation in which he was involved and was a party. The rules of procedure under Order 22 are designed to advance justice and should be so interpreted as not to make them penal statutes for punishing erring parties."

In the decision in the case of Bhagwan Swaroop v. Mool Chand, reported in (1983) 2 SCC 132 : (AIR 1983 SC 355) the Supreme Court observed:

"Fairplay in action must inhere in judicial approach also as in administrative law and

court's approach should be oriented with this view whether substantial justice is done between the parties or technical rules or procedure are given precedence over doing substantial justice in court. A code of procedure is designed to facilitate justice and further its ends; not a penal enactment for punishment and penalties."

In the decision in the case of Manubhai Sardarsing Jadeja v. Bhupendra Jivanlal Mistry, reported in 1988 (1) Guj LH (UJ) 31, a learned single Judge of this Court, dealing with condonation of delay, observed :

"At the most there was some negligence on the part of the advocate and his clerk, but it cannot be said that there was negligence, let alone gross negligence, on the part of the defendant. Once it is found that the defendant was not aware of the hearing of the suit, through no fault of his, it must also be held that he was unaware of the passing of the decree till 14-5-1983 and there was sufficient cause for condoning the delay."

Considering the above said decisions, it is clear that the technicalities recording the condonation of delay cannot hamper the case, which will otherwise be fought on merits. If that be so, substantial justice will be denied to the parties concerned. No doubt, it is not in every case that the delay has to be automatically excused. When especially there are some reasonable grounds to be stretched in favour of the party, who has delayed in coming to the court, the Court should not hesitate in liberally viewing the matter and condoning the

@page-Guj84

delay. The question of limitation, no doubt, creates a right in the party, who can agitate that there is a delay regarding filing of an appeal or a revision. But that itself cannot stand in the way of excusing the delay and that is why the Supreme Court has clearly held that a code

of procedure is designed to facilitate justice and further its ends, not a penal enactment for punishment and penalties. It has been brought to our notice during argument that the name of Shri S.B. Patel, General Secretary, is not in the array of defendants in the judgment rendered by the City Civil Court in Civil Suit No. 1353 of 1983. It is also clear from the facts of the case that Shri S.B. Patel became General Secretary only on early as 1986, while the suit is of the year 1983, when one Mr. Rathod was the General Secretary. In as much as the name of Rathod finds a place in the array of defendants in the judgment rendered by the City Civil Court and in as much as the suit was filed as early as in 1983, the reasoning to the effect that Shri S.B. Patel, the present General Secretary was not aware of the proceedings until he received a letter from the appellant, is a reasonable explanation to be accepted. No doubt, the learned Advocate General, pointing out the chance of vakalatnama from Mr. Shah to another Shri Premchand to appear on behalf of the respondent's herein as early as 24-12-1987 states that it makes out a case that Shri S.B. Patel would have been aware of these proceedings on behalf of the respondent-Union. No doubt, he is not able to produce any vakalatnama signed by Shri S.B. Patel. Even assuming that there was a vakalatnama, which is not made out by record before us, it cannot be said that Shri S.B. Patel was aware of all the documents he has signed while acting as a General Secretary of the union concerned. The decree of the City Civil Court is dated 9-2-1988. The letter referred by Shri S.B. Patel, from which he was able to know the decree of the Court, is dated 22-11-1988. On 22-12-1988, the present appeal came to be filed. It is also the say of Mr. Clerk, the learned counsel appearing for the respondents, that the copy application was filed on 6-12-1988 and the copy of the judgment alone was received on 17-12-1988. In as much as the decree was not received, even though appeal was filed on 22-12-1988. Mr. Clerk states that copy application for the decree was made on

23-12-1988 and such a decree was obtained only on 2-1-1989. From these facts, it is clear that there is a genuine attempt to come forward with a First Appeal against the judgment and decree of the City Civil Court in Civil Suit No. 1353 of 1983. In as much as we are hearing finally the Letters Patent Appeal and had these basic information, through arguments and from the averments made in the petition and the affidavit-in-reply, there cannot be any difficulty in coming to the conclusion that there are reasonable and sufficient grounds to excuse the delay in this case. Further, the principles laid down by the Supreme Court, which we have extracted in paragraphs supra, amply establish that while considering the question of excusing the delay, pragmatic view has to be taken and wherever possible, the Court must be inclined in excusing the delay so as to make the parties to contest the matter on merits, instead of scuttling the whole matter at the threshold itself while dismissing the case on the ground of limitation.

9. Considering all these facts of the case and also from the discussion we have made above, we are not inclined to interfere with the discretionary order passed by the learned single Judge of our High Court and accordingly, this Letters Patent Appeal is dismissed.

10. Mr. K.S. Nanavati, the learned counsel appearing for the appellant, submits that this order passed by us today may be stayed for a period of four weeks in order to enable his client to go to the Supreme Court. We are not inclined to stay this order. The First Appeal, which has been numbered, after condoning the delay by the learned single Judge, is before the Division Bench. Mr. Clerk states that it has been ordered to be posted today before the Division Bench, which is taking up First Appeals. By our order in Letters Patent Appeal No. 59 of 1989, passed on 24th February, 1989, we have directed that this matter may be placed before the Division Bench

taking up such matters on 1-3-1989. In that order, Mr. Clerk, the learned

@page-Guj85

counsel appearing for the respondent No.1, made a statement, after getting instructions from his client Shri S.B. Patel, General Secretary, regarding the behaviour of the Union until the matter is heard by the Division Bench on 1-3-1989. In view of such statement made by Mr. Clerk, Mr. Nanavati, the learned counsel appearing for the appellant in that Letters Patent Appeal, withdrew the Letters Patent Appeal. As it is, we have dismissed the Letters Patent Appeal, confirming the order of the learned single Judge, condoning the delay in filing the First Appeal, after following the principles laid down by the Supreme Court. We do not find that there is any necessity to stay the said order and if at all the appellant requires any interim safeguard, he can move the Division Bench taking up such matters, for the purpose of appropriate relief. For all these reasons, we do not find any ground made out for staying the order, which we have passed today. Hence, the request of Mr. Nanavati to stay the operation of the order passed by us today is rejected.

Appeal Dismissed .