

2014 (0) GLHEL-HC 231377

GUJARAT HIGH COURT

Hon'ble Judges:Ravi R.Tripathi and Mohinder Pal JJ.

Chief Controlling Revenue Authority Versus Gujarat Borosil Limited

CIVIL APPLICATION (FOR CONDONATION OF DELAY) No. 4011 of 2014 ;
LETTERS PATENT APPEAL (STAMP NUMBER) No. 1575 of 2013 ;
SPECIAL CIVIL APPLICATION No. 6595 of 1999 ;
CIVIL APPLICATION No. 4012 of 2014 ;
LETTERS PATENT APPEAL (STAMP NUMBER) No. 1576 of 2013 ;
CIVIL APPLICATION No. 4015 of 2014 ;
LETTERS PATENT APPEAL (STAMP NUMBER) No. 1579 of 2013 ;
CIVIL APPLICATION No. 4017 of 2014 ;
LETTERS PATENT APPEAL (STAMP NUMBER) No. 1580 of 2013 ;
CIVIL APPLICATION No. 4019 of 2014 ;
LETTERS PATENT APPEAL (STAMP NUMBER) No. 1581 of 2013 ;
CIVIL APPLICATION No. 4020 of 2014 ;
LETTERS PATENT APPEAL (STAMP NUMBER) No. 1582 of 2013 ;
CIVIL APPLICATION No. 4022 of 2014 ;
LETTERS PATENT APPEAL (STAMP NUMBER) No. 1583 of 2013 ;
CIVIL APPLICATION No. 4024 of 2014 ;
LETTERS PATENT APPEAL (STAMP NUMBER) No. 1584 of 2013 ;
CIVIL APPLICATION No. 3820 of 2014 ;
LETTERS PATENT APPEAL (STAMP NUMBER) No. 239 of 2014 ; *J.Date :- MAY 7,
2014

Condonation of delay - limitation - application seeking condonation of delay of 1439 days - in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bonafide, a liberal concession has to be adopted to advance substantial justice - in the facts and circumstances, Department cannot take advantage of various earlier decisions - claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available - law of limitation undoubtedly binds everybody including the Government - there cannot be two separate parameters in the matters of condonation of delay when an individual is seeking condonation of delay and when a Government department or a limb of the Government is seeking condonation of delay - Court is conscious of the fact that refusing to condone the delay will result in a meritorious matter being thrown out at the very threshold and cause of justice may be defeated - if these civil applications seeking condonation of delay are rejected, its ultimate result will be that the public exchequer will be deprived of the amount involved in all these matters without there being an examination of the issue by Division Bench - these applications, if are allowed, no apparent prejudice is caused to the private individuals who are opposing these applications - only effect will be that the matter will be examined on merits - delay condoned - applications allowed.

Imp.Para: [[4](#)] [[7](#)] [[9](#)] [[10](#)]

Shri K. S. Nanavati
Sr. Advocate

Equivalent Citation(s):
2014 JX(Guj) 420 : 2014 GLHEL_HC 231377

JUDGMENT :-
RAVI R. TRIPATHI, J.

1 All these civil applications are filed seeking condonation of delay filed by the State of Gujarat.

2 Learned Assistant Government Pleader , Mr.Shukla invited the attention of the Court to the contents of Civil Application No.3820 of 2014 in Letters Patent Appeal (Stamp) No.239 of 2014 which is filed by the Deputy Collector , Stamp Duty Valuation Organization and it is filed against the Bombay Burmah Trading Corporation Ltd. which is described to be an existing company under the provisions of Companies Act, 1956 seeking condonation of delay of 1439 days (delay varies from application to application).

3 One Mr.N.H.Datanwala , Vice President Corporate & Company Secretary of the opponent-Company has filed affidavit-in-reply to the present civil application.

4 Learned senior advocate, Mr.K.S.Nanavati, vehemently opposed this civil application but while doing so, he did not point out one single reason except stating that, the delay is not required to be condoned in light of the latest decision of Hon ble the Apex Court in the matter of Post Master General and Others V/s. Living Media India Limited and another reported in (2012) 3 SCC 563 by which serious prejudice is going to be caused to the respondent-Company. The Court is of the opinion that delay application is opposed with undue vehemence when one does not have a sound case on merits. The learned senior advocate invited the attention of the Court to the observations made by the Hon ble the Apex Court in paragraph Nos. 26 to 30 which are quoted herein below for ready reference.

"26. In spite of affording another opportunity to file better affidavit by placing adequate material , neither the Department nor the person in-charge has filed any explanation for not applying the certified copy within the prescribed period. The other dates mentioned in the affidavit which we have already extracted, clearly show that there was delay at every stage and except mentioning the dates of receipt of the file and the decision taken there is no explanation as to why such delay had occasioned. Though it was stated by the Department that the delay was due to unavoidable circumstances and genuine difficulties, the fact remains that from day one the Department or the person/persons concerned have not evinced diligence in prosecuting the matter to this Court by taking appropriate steps.

27. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us.

Shri K. S. Nanavati
Sr. Advocate

28. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bonafide, a liberal concession has to be adopted to advance substantial justice we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government.

29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.

30. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay".

5 The learned senior advocate next relied upon a decision of the Hon ble the Apex Court in the matter of State of Uttar Pradesh through Executive Engineer and Another V/s. Amar Nath Yadav reported in (2014) 2 SCC 422 and submitted that the Hon ble the Apex Court has relied upon its earlier judgment in the matter of Post Master General (supra). The learned senior advocate next relied upon an unreported decision of the Hon ble the Apex Court in petition for Special Leave to Appeal (Civil) No.12722 of 2011, dated 11.4.2014, and submitted that now, the Hon ble the Apex Court is taking stricter approach than liberal approach which was taken in past.

6 The Hon ble the Apex Court has observed that a stricter approach is required in the matters of condonation of delay. It is also said that, there cannot be two separate parameters in the matters of condonation of delay when an individual is seeking condonation of delay and when a Government department or a limb of the Government is seeking condonation of delay.

7 On careful consideration of the aforesaid judgments of the Hon ble the Apex Court in light of the law laid own by the Hon ble the Apex Court, the Court examined the matter. No doubt, it is true that in paragraphs which are set out in the civil application explaining the delay as submitted by the learned senior advocate that there is no explanation for the delay whatever is stated is certainly not upto the satisfaction. But then, this Court cannot loose sight of the fact that in majority of cases Government is represented by comparatively junior advocates - Assistant Government Pleaders who are just in the beginning of the career. Many a times, the Court has noticed that instructions passed by the officers representing the Government department are also not well articulated which causes lot of difficulties for the learned Assistant Government Pleaders to draft the application, particularly, when it is strongly

Shri K. S. Nanavati
Sr. Advocate

contested by the private respondents like the present one who are not only having unlimited financial resources but are having best possible legal acumen to appear for them and contest.

8 The Court cannot be unmindful of the fact that there are instances when there are individuals who are interested to see that file does not move not only from one department to another but in the same department from one table to another. The Court is not required to put it on record that this is always for extraneous considerations because ultimately , an individual is interested in getting the favorable result.

9 The Court is conscious of the fact that refusing to condone the delay will result in a meritorious matter being thrown out at the very threshold and cause of justice may be defeated. As against this, when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties. The Court is also conscious of the fact that judiciary is respected not on account of its power to legalise injustice on technical grounds, but because it is capable of removing injustice and is expected to do so as was held by Hon ble the Apex Court in the matter of Collector, Land Acquisition, Anantnag V/s. Mst.Katiji reported in AIR 1987 SC 1353 which was relied by the Division Bench of this Court in the matter of Babubhai Bhagwanji Mehta & Ors. V/s. State of Gujarat, Spl. Secretary (Appeals) & Ors. reported in 2004(1) GLR 532.

10 The present is the group of petitions; wherein question about payment of stamp duty is involved and the amount is running in crores of rupees. Ultimately, if these civil applications seeking condonation of delay are rejected, its ultimate result will be that the public exchequer will be deprived of the amount involved in all these matters without there being an examination of the issue by the Division Bench. The Court is of the opinion that this is not what is warranted by law and therefore unless private individuals are able to point out something grave in the nature of a deliberate mischief and direct outcome of that mischief is going to cause serious prejudice to the private individuals , the delay condonation application is required to be considered with due leniency in favour of the Government organization. The Hon ble the Apex Court in more than one judgments has taken note of the fact that Government organization act through its employees who are known to be impersonal in dealing with the matters of the Government. The Court is of the opinion that these applications, if are allowed, no apparent prejudice is caused to the private individuals who are opposing these applications. The only effect will be that the matter will be examined on merits. Therefore all these applications are allowed. Delay condoned. Rule made absolute.

11 At this juncture , learned Assistant Government Pleader, Mr.Shukla, requested that these Letters Patent Appeals be directed to be listed for admission hearing tomorrow.

12 Learned senior advocate, Mr.K.S.Nanavati, requested that the appeals may not be directed to be listed tomorrow or day after tomorrow because firstly, he will have to inform his clients about result of these Civil Applications which may be carried to the Hon ble the Apex Court. That being so, no orders are passed for placing these Letters Patent Appeals for admission hearing tomorrow.

Shri K. S. Nanavati
Sr. Advocate