SUPREME COURT OF INDIA

Oriental Aroma Chemical Indus.Ltd.

Vs.

Gujarat Indisl.Devt.Corp.

C.A.No.2075 of 2010

(G.S.Singhvi and Asok Kumar Ganguly JJ.)

26.02.2010

JUDGEMENT

G.S.Singhvi, J.

1. Leave granted.

2. Whether the Division Bench of Gujarat High Court was justified in condoning more than four years' delay in filing of appeal by the respondents against judgment and decree dated 30.10.2004 passed by Civil Judge (Sr. Division) Gandhinagar (hereinafter referred to as "the trial Court") in Special Civil Suit No.32 of 2001 is the question which arises for consideration in this appeal.

3. The appellant was allotted a piece of land for setting up an industrial unit at Ankleshwar subject to the terms and conditions embodied in agreement of licence dated 2.4.1976 which, among other things, provided for consumption of specified quantity of water by the appellant. The agreement also provided for payment of 70% of the cost of agreed quantity of water irrespective of consumption. In 1982, respondent No.1 demanded non utilization charges amounting to Rs.4068/-, which were deposited by the appellant. After some time, respondent No.1 demanded Rs.2,69,895/- towards water charges. For next 10 years, the parties entered into long correspondence on the issue of levy of water charges, etc. Finally, respondent No.1 issued bill dated 13.1.1996 requiring the appellant to pay Rs.22,96,207/- towards water charges. The appellant challenged the same in Special Civil Suit No.32 of 2001. The summons issued by the trial Court were duly served upon the respondents but no written statement was filed on their behalf to controvert the averments contained in the plaint and none appeared on the dates of hearing despite the fact that the case was adjourned on more than one occasion. The suit was finally decreed on 30.10.2004 and it was declared that the appellant is not liable to pay Rs.22,96,207/- by way of minimum charges for water for the period between 1978 and 16.4.2001 and, thereafter, till the water was supplied by respondent No.1. After few months, the appellant filed another suit which was registered as Civil Suit No.222 of 2005 and prayed that respondent 3 No.1 be directed to issue no objection

certificate in its favour. The summons of the second suit were also served upon the respondents, but neither the written statement was filed nor any one appeared on their behalf. The second suit was also decreed on 12.12.2007 and respondent No.1 was directed to issue no objection certificate to the appellant. In compliance of the decree passed in the second suit, the concerned authority of the Corporation issued no dues certificate dated 9.7.2008.

4. After four months and fifteen days of taking action in furtherance of the decree passed in the second suit, the respondents filed an appeal against judgment and decree dated 30.10.2004 passed in Special Civil Suit No.32 of 2001. They also filed an application under Order 41 Rule 3A of the Code of Civil Procedure read with Section 5 of the Limitation Act for condonation of delay by making the following assertions:

> "1. That this appeal is preferred against the judgment and decree of the learned Civil Judge (SD), Gandhinagar passed on 30.10.2004. That the suit was filed for permanent injunction and declaration and on the ground that the advocate of the GIDC has appeared but no written statement was filed and, therefore, the learned Judge resorted to Order 8 Rule 11 of the Civil Procedure Code and granted the declaration as prayed for in the plaint. That after the decree being passed, the present plaintiff filed another suit being Civil Suit No.222 of 2005 and in which the decree was passed on 12.12.2007. That particular decree is to be challenged before this Honourable Court and, therefore, in 2008, after the second decree was passed, it was brought to the notice of the Legal Department as well as to the Executive Engineer at GIDC, Ankleshwar as to how this has happened and it seems that because of numerous transfers as well as it is also 4 possible that the party might have arranged or joined hands with some employee of the Corporation and thereby after engaging advocate, no body has gone to the advocate for the purpose of giving instruction or filing the written statement and as a result thereof, decree is passed and only in the month of January/February, the law department came to know and therefore, an inquiry was made into the matter but the GIDC could not trace out as to at whose hands the mistake or mischief was done, however, when after inquiry everything was noticed and, therefore, the application for certified copy was made on 17.11.2008 and on 18.11.2008, the copy was ready and the same was sent to the advocate and thereafter the present appeal is preferred.
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> 2. That a long span from 30.10.2004 to 18.11.2008, practically four years time is passed and this has happened only because of some mistake or mischief on the part of the staff and, therefore, the appeal could not be preferred, otherwise it is a matter of substantial right of the GIDC where the water charges are leveled in spite of water being used or not and when the bills were already drawn, there was not intention on the part of the GIDC not to contest the suit. But it is difficult to trace out how this has happened and, therefore, when the inquiry was conducted in detail, the facts were brought to the notice and on that basis the cause has arisen to file this appeal and the delay of 1067 days cause in filing the appeal is required to be condoned in the interest of justice."

On notice, a detailed reply was filed on behalf of the appellant in the form of an affidavit of its Director, Shri Sanjay Kantilal Shah, paragraphs 4.16, 5 and 6 whereof read as under:

"4.16. That the First Appeal preferred by the appellant has been preferred with Civil Application No.14201 of 2008 and the said application for condonation of delay under Order 41 Rule (3A) read with Section 5 of the Limitation Act. As a matter of fact, the petitioner company being a Government Corporation is bound to follow the rules and regulations as it is and cannot deviate itself from the provisions of law. As a matter of fact in filing the present First Appeal there is a delay of more than 4 years. Moreover, in the second suit, the 5 decree and judgment is already passed and thereafter now the petitioner has no right to challenge the order of the Civil Suit No.32/2001. But for the reasons best known to the appellant the correct number of days has not been mentioned in the condonation of delay application. As a matter of fact, the petitioner being a Government Corporation has to follow the rules and regulations strictly and is required to give proper explanation as to why the Appeal has not been preferred within the time frame and if they were so, being aggrieved by the order passed by the Ld. Civil Judge (SD) Gandhinagar. If the condonation of delay is taken into consideration the said page is only a 4 pages wherein no proper explanation as to what the petitioner was doing for the past year has been given in the said and thereby also the said application is required to be dismissed in limine.

5. With regard to para -1 of the Civil Application, I most humbly and respectfully submit that it is true that the decree passed by the Ld. Civil Judge (S.D) Gandhinagar on 13.10.2004. It is also true that in the said Suit, the advocate for the GIDC had appeared but had not filed written statement and therefore, the Ld. Judge has passed the order under the provisions of the Code of Civil Procedure and granted declaration as prayed for in the plaint. It is also true that after decree was passed, the present respondent filed another suit being Civil Suit No.222/2005 and the said decree was passed on 12.12.2007. It is not true that in the year 2008 after the second decree was passed it was brought to the knowledge of the Legal Department that the earlier decree was required to be challenged. Lack of legal knowledge cannot be said to be ground to condone the delay. If the facts had not been brought well in time then for the said it cannot be said that the respondent company is required to be punished. As a matter of fact nothing has been mentioned on Affidavit as to who did not give proper instructions or as to who had possibly played the mischief and as to who had joined the hand with the respondent company. It is only the blame game which is being played and allegations are being leveled in order to save its own skin but there is no truth behind the facts mentioned therein and thereby there is no way as to how the present application can ever be allowed. Moreover the respondent is not knowing any persons of the G.I.D.C. (as on today or at any time).

> 6. With regard to para-2 of the Civil Application, I most humbly and respectfully say and submit that it is true that more than 4 years time has been passed from the date of the decree but as to who has played the mischief or mistake or had it been intentionally filed within the time frame that is for the reasons best known to the appellant corporation and that is something on which the petitioner company would not like to comment at this juncture. No proper justification or explanation has been brought on record as to what was happening for the past 4 years, has also not given anything in detail and neither true and correct facts have been mentioned nor the calculation in respect of the days have been made properly and thereby also on all the said counts, the present application is required to be dismissed with exemplary cost.

5. The Division Bench of the High Court referred to the judgments of this Court in *State of Bihar and others v. Kamleshwar Prasad Singh and another*[1], *N. Balakrishnan v. M. Krishnamurthy*[2], *State of Haryana v. Chandra Mani and others*[3] , *Spl. Tehsildars, Land Acquisition, Kerala v. K.V. Ayisumma*[4], *Punjab Small Industries and Export Corporation Ltd. and others v. Union of India and others*[5], *P.K. Ramachandran v. State of Kerala and another*[6] *and Collector, Land Acquisition, Anantnag v. Mst. Katiji*[7] and condoned the delay by making a cryptic observation that the cause shown by the respondents is sufficient. The relevant portion of the High Court's order is reproduced below:

> "Applying the principles laid down by the Supreme Court to the facts of the present case, we are satisfied that sufficient cause 7 is made out by the applicant for condonation of delay. Over and above, in view of the fact that reasons mentioned in this application have not been controverted by the other side and also in view of the principles governing the discretionary exercise of power under Section 5 of the Limitation Act, 1963, we are of the view that sufficient cause has been stated for not filing the appeal in time and hence, delay caused in filing appeal is to be condoned and the application is required to be allowed."
> (Emphasis supplied)

6. Shri L.N. Rao, learned senior counsel appearing for the appellant argued that the impugned order is liable to be set aside because the High Court allowed the application for condonation of delay by erroneously assuming that the delay was of 1067 days only. Learned senior counsel pointed out that appeal against judgment and decree dated 30.10.2004 was filed on 24.11.2008 i.e., after more than four years, but by scoring out the figures and words "4 years and 28" in paragraphs 2 and 3 of the application and substituting the same with figure "1067", the respondents misled the High Court in believing that delay was of 1067 days. He then referred to affidavit dated 16.2.2009 of Shri Sanjay Kantilal Shah to show that substantial grounds had been put forward on behalf of the appellant for opposing the respondents' prayer for condonation of delay of more than four years and submitted that the Division Bench of the High Court committed serious error in condoning the delay by assuming that no reply had been filed by the appellant. Learned senior counsel also invited the Court's attention to affidavits dated 25.11.2009 and 4.2.2010 of Shri Pravin 8 Keshav Lal Modi and Shri Harishbhai Patel respectively filed in this Court on behalf of the respondents

as also the list of events attached with the second affidavit to show that the functionaries of respondent No.1 were very much aware of the proceedings of Special Civil Suit No.32 of 2001 and Civil Suit No.222 of 2005 and submitted that the High Court should not have accepted patently incorrect assertions contained in the application for condonation of delay, which was supported by an affidavit of none else than the General Manager of respondent No.1, Shri R.B. Jadeja, that the Law Department came to know about the judgment of Special Civil Suit No.32/2001 only in January/February, 2008.

7. Shri Anip Sachthey, learned counsel for the respondents fairly admitted that the appeal was filed after lapse of more than four years of judgment dated 30.10.2004 but submitted that this Court should not interfere with the discretion exercised by the High Court to condone the delay and the respondents should not be penalized simply because the advocates appointed by the Corporation did not bother to file written statement and appear before the trial Court on the dates of hearing.

> "Learned counsel emphasized that this Court has repeatedly taken cognizance of the lethargy and callousness with which litigation is conducted on behalf of the State and its agencies/instrumentalities at various levels and condoned the delay so as to enable them to contest the 9 matters on merit and submitted that similar approach may be adopted in the present case and the appellant may be compensated by award of adequate cost."

8. We have considered the respective submissions. The law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay.

> "The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time. The expression "sufficient cause" employed in Section 5 of the Indian Limitation Act, 1963 and similar other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which sub serves the ends of justice. Although, no hard and fast rule can be laid down in dealing with the applications for condonation of delay, this Court has justifiably advocated adoption of a liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate - *Collector, Land Acquisition, Anantnag v. Mst. Katiji*[8], *N. Balakrishnan v. M. Krishnamurthy*[9] *Vedabai v. Shantaram Baburao Patil*[10]. In dealing with the applications for condonation of delay filed on behalf of the State and its agencies/instrumentalities this Court has, while emphasizing that same yardstick should be applied for deciding the applications for condonation of delay filed by private individuals and the State, observed that certain amount of latitude is not impermissible in the latter case because the State represents

collective cause of the community and the decisions are taken by the officers/agencies at a slow pace and encumbered process of pushing the files from table to table consumes considerable time causing delay - *G. Ramegowda v. Spl. Land Acquisition Officer*[11], *State of Haryana v. Chandra Mani*[12], *State of U.P. v. Harish Chandra*[13], *State of Bihar v. Ratan Lal Sahu*[14], *State of Nagaland v. Lipok Ao*[15], *and State (NCT of Delhi) v. Ahmed Jaan*[16].

9. In the light of the above, it is to be seen whether the respondents had offered any plausible/tangible explanation for the long delay of more than four years in filing of appeal and the High Court was justified in condoning the delay.

10. A reading of the impugned order makes it clear that the High Court did make a bald reference to the application for condonation of delay filed 11 by the respondents but allowed the same without adverting to the averments contained therein and the reply filed on behalf of the appellant.

> "Not only this, the High Court erroneously assumed that the delay was of 1067 days, though, as a matter of fact, the appeal was filed after more than four years. Another erroneous assumption made by the High Court was that the appellant had not filed reply to controvert the averments contained in the application for condonation of delay. It may have been possible for this Court to ignore the first error in the impugned order because by deleting the figures and words "4 years and 28" in paragraphs 2 and 3 of the application and substituting the same with the figure 1067, the respondents misled the High Court in believing that the delay was of 1067 days only but it is not possible to fathom any reason why the Division Bench of the High Court omitted to consider the detailed reply which had been filed on behalf of the appellant to contest the prayer for condonation of delay. Notwithstanding this, we may have set aside the impugned order and remitted the case to the High Court for fresh disposal of the application filed by the respondents under Section 5 of the Limitation Act but, do not consider it proper to adopt that course, because as will be seen hereinafter, the respondents did not approach the High Court with clean hands."

11. The statement containing the list of events annexed with the affidavit of Shri Harishbhai Patel shows that before filing suit, the appellant had issued notice dated 5.2.2001 to which respondent No.1 sent reply dated 13.3.2001. The summons of Special Civil Suit No. 32/2001 instituted by the appellant were served upon the respondents sometime in the month of April/May 2001. On 16.5.2001, General Manager (Law) instructed Ms. Rekhaben M. Patel to appear on behalf of the respondents. Executive Engineer, Ankleshwar was also directed to contact the advocate for preparing the reply affidavit. On 23.5.2001, Deputy Executive Engineer, Ankleshwar forwarded the comments to Ms. Rekhaben M. Patel. On 18.4.2002, the appellant filed an application for ex parte proceedings against the respondents. On 30.11.2002, the trial Court directed the respondents to appear on 12.12.2002 with indication that if they fail to do so, ex parte proceedings will be held. Thereupon, General Manager (Law) wrote letter dated 10.12.2002 to Ms. Rekhaben to remain present on the next date of

hearing i.e., 12.12.2002. On 30th December, 2002, Deputy Executive Engineer, Ankleshwar wrote to the advocate in the matter of submission of para-wise comments. On 2.1.2003, the Executive Engineer is said to have sent a letter to the advocate informing her about the next date of hearing i.e., 10.1.2003 and asked her to remain present. After almost one year and ten months, the trial Court pronounced the ex parte judgment and decreed the suit. The summons of the second suit were 13 received sometime in May, 2005. On 20.6.2005, Shri B.R. Sharma, Advocate was instructed to appear on behalf of the respondents. On 10.1.2006, Deputy Executive Engineer, Ankleshwar informed the new advocate about the next date of hearing which was 23.1.2006. The second suit was decreed on 12.12.2007.

12. During the course of hearing, learned counsel for the respondents fairly conceded that in the second suit filed by the appellant there was a specific mention of decree dated 30.10.2004 passed in Special Civil Suit No. 32/2001. He also conceded that even though the first suit remained pending before the trial Court for three years and five months and the second suit remained pending for more than two years, none of the officers of the Law Department or the Engineering Department of respondent No.1 appeared before the Court.

13. From what we have noted above, it is clear that the Law Department of respondent No.1 was very much aware of the proceedings of the first as well as the second suit. In the first case, Ms. Rekhaben M. Patel was appointed as an advocate and in the second case Shri B.R. Sharma was instructed to appear on behalf of the respondents, but none of the officers is shown to have personally contacted either of the advocates for the purpose of filing written statement and preparation of the case and none 14 bothered to appear before the trial Court on any of the dates of hearing. It is a matter of surprise that even though an officer of the rank of General Manager (Law) had issued instructions to Ms. Rekhaben M. Patel to appear and file vakalat as early as in May 2001 and Manager (Law) had given vakalat to Shri B.R. Sharma, Advocate in the month of May 2005, in the application filed for condonation of delay, the respondents boldly stated that the Law Department came to know about the ex parte decree only in the month of January/February 2008. The respondents went to the extent of suggesting that the parties may have arranged or joined hands with some employee of the corporation and that may be the reason why after engaging advocates, nobody contacted them for the purpose of giving instructions for filing written statement and giving appropriate instructions which resulted in passing of the ex parte decrees. In our view, the above statement contained in para 1 of the application is not only incorrect but is ex facie false and the High Court committed grave error by condoning more than four years' delay in filing of appeal ignoring the judicially accepted parameters for exercise of discretion under Section 5 of the Limitation Act.

14. In the result, the appeal is allowed. The impugned order of the High Court is set aside and the application for condonation of delay filed by the respondents is dismissed. As a corollary, the appeal filed by the 15 respondents against judgment and decree dated 30.10.2004 shall stand dismissed as barred by time. However, it is made clear that the disposal of this appeal shall not absolve the higher functionaries of respondent No.1 from the responsibility of conducting a thorough probe into the matter so that accountability of the

defaulting officers/officials may be fixed and the loss, if any, suffered by respondent No.1 recovered from them after complying with the rules of natural justice.

[1]*AIR 2000 SC 2388*
[2]*JT 1998 (6) SC 242*
[3]*AIR 1996 SC 1623*
[4]*AIR 1996 SC 2750*
[5]*1995 Suppl. (4) SCC 681*
[6]*(1997) 7 SCC 566*
[7]*AIR 1987 SC 1353*
[8]*(1987) 2 SCC 107*
[9]*(1998) 7 SCC 123 and 10*
[10]*(2001) 9 SCC 106*
[11]*(1988) 2 SCC 142*
[12]*(1996) 3 SCC 132*
[13]*(1996) 9 SCC 309*
[14]*(1996) 10 SCC 635*
[15]*(2005) 3 SCC 752*
[16]*(2008) 14 SCC 582*