

Filing No.: CRMA/991/2022
Filed On: 11/10/2022
Decided On : 13/10/2022

**IN THE COURT OF PRINCIPAL SESSIONS JUDGE,
AT BHARUCH**

Criminal Misc. Application (Condonation of Delay) No.991/2022

Applicant: Ahir Rajeshbhai Jagdishbhai
R/o. Nishal Falia, Simodra-Simdhara,
Tal. Jhagadia, Dist. Bharuch.

V/s.

Opponent: Mayur Ramanbhai Patel, Proprietor of Haas
Enterprise,
R/o. 8, Pruthvi Trade Centre,
Station Road, Bharuch.

Appearance:

Ld. Advocate Mr. R. M. Vasava, for the applicant.

Ld. Advocate Mr. K. N. Chavda, for the opponent

An application U/s.5 of The Indian Limitation Act, 1963.

JUDGMENT

1. The present application has been preferred by the applicant U/s.5 of the Limitation Act, 1963, praying for condonation of delay of 71 days, having occurred in preferring criminal appeal against the judgment and order of sentence passed by learned 3rd Additional Chief Judicial Magistrate, Bharuch in CC No.15089/2021 on 02/07/2022.

2. Upon due service of notice, the opponent has appeared through his advocate Mr. K. N. Chavda who has strongly objected this application.
3. Heard the learned advocate Mr. R. M. Vasava on behalf of the applicant who has reiterated the averments of the application and submitted that, the applicant remained unemployed during corona period and he could not engage advocate because of poor financial condition, and meanwhile learned trial court has passed ex-parte order in his absence, hence he was unaware about the order that was passed. Mr. Vasava has further submitted that, applicant is illiterate person and he was not conversant with the procedural law, as such he could not file the appeal in time and delay of 71 days having occurred. Mr. Vasava has also submitted that, such delay is not willful and inordinate delay and it is not inaction on the part of applicant also, hence, it should be condoned. Thus, he has prayed that, the present application should be allowed.
4. Heard Learned Advocate Mr. K. N. Chavda appearing for the opponent who at the outset has submitted that, the applicant has not mentioned any proper and bonafide reasons for the delay, which has occurred. Mr. Chavda has further submitted to the court that, the trial court has passed order on 02/07/2022 and the applicant having sufficient time period even though he has not file the appeal amounts to inaction on his part. Mr. Chavda has also submitted that, sufficient cause has not been shown by the

applicant, hence unexplained delay even a day may not be condoned. Thus, this application should be dismissed.

5. Considering the rival contentions of both the learned advocates, it is an admitted fact that the trial court has passed ex-parte order in absence of applicant and even he could not engage advocate because of his poor financial condition, hence he could not file an appeal within stipulated time period and delay of 71 days having occurred. Therefore, the delay is not willful and inordinate and it is not inaction on the part of applicant also. Whether the allegations made in the appeal are true or false that can be decided on merits only. Also, there does not appear to be any malafide intention on his part so as to prolong the matter. Thus, it can be said that, the cause shown by the applicant is “sufficient cause” to condone the delay. The ultimate goal of procedural law is to do justice. Generally the Court should take lenient and pragmatic view for doing substantive justice to condone the delay. Further, the legislature has conferred power to condone the delay by enacting Section 5 of the Limitation Act, 1963, in order to enable the Courts to do substantial justice to parties by disposing of matters on “merits”. The expression “sufficient cause” employed by the legislature is adequately elastic to enable the Court to apply the law in a meaningful manner which sub-serves the ends of justice that being the life-purpose for the existence of the institution of Courts. Therefore, this court is of the view that with the object of doing substantial justice and sufficient cause having been made out, the applicant

has persuaded the Court to condone the delay in filing the appeal. Dismissing the appeal on technical ground of limitation would not in any way advance the interests of justice but admittedly result in failure of justice.

6. In view of above discussion, this court would like to exercise discretion in favour of the applicant and condone the delay of 71 days in preferring the criminal appeal, subject to deposit cost. Thus, the following final order.

ORDER

7. This application is hereby allowed.
8. The delay in preferring the criminal appeal is hereby condoned, subject to the applicant depositing Rs.500/- (Rupees Five Hundred only) towards costs with the DLSA, Bharuch within next 7 working days.
9. After the applicant having deposited the total amount of costs with the DLSA, Bharuch, the Registry is directed to admit the criminal appeal and proceed in accordance with the law.
10. Signed & Pronounced in the open Court today on 13th October, 2022.

Date: 13/10/2022

(Prashantkumar Shantilal Brahmabhatt)
Principal Sessions Judge,
Bharuch
Code No.GJ00335

Mayur Patel