



Received on : 04.10.2022
 Registered on: 04.10.2022
 Decided on : 19.12.2022
 Duration : 0 Y, 02 M, 15 Days

**IN THE COURT OF PRINCIPAL DISTRICT JUDGE
 AT RAJPIPLA, DISTRICT NARMADA**

CMA-DC (Condonation of Delay) NO.40 OF 2022

Exh._____

Applicant (Original plaintiff) :

1. Vaishaliben D/o Bharatbhai Rana &
 D/o Jagjivanbhai
 R/o : Patel Vaga, Tal. Dabhoi,
 Dist. Vadodara.

V e r s u s

Respondents (Original defendants):

1. Kiranbhai Parmanand Sharma
 Age : 45 years, Occu. : labour,
2. Birju Parmanand Sharma
 Age : 60 years, Occu. : labour,
 both are R/o : At – Pratapnagar,
 Behind Jain Derasar,
 Tal. Nandod, Dist. Narmada.

 Ld. Adv. Mr. B.B. Vasava for the Appellant.

Ld. Adv. Mr. N.P. Limbachiya for the respondent.

**AN APPLICATION UNDER SECTION 5 OF THE INDIAN
 LIMITATION ACT, 1963.**

::J U D G M E N T::

1. The present applicants have filed the application under Section 5 of the Limitation Act for the delay condonation of the time limit which expired to prefer appeal against the order passed by Learned Principal Senior Civil Judge, Rajpipla, Dist. Narmada in Regular Civil Suit No. 74/2021 delivered on 30.07.2022.

2. The short facts of the present applicants case are that the present appellant (original plaintiff) had filed a Regular Civil Suit No. 74/2021 against the present respondents (original defendants) under Specific Relief Act in respect of suit property before the Learned Principal Senior Civil Judge, Rajpipla, Dist. Narmada which was rejected by Learned Principal Senior Civil Judge, Rajpipla by order dated 30.07.2022. Hence, the present applicant want to prefer the appeal against the judgment and decree passed in Regular Civil Suit No. 74/2021 but the present applicant could not file the appeal in time because of her financial poor condition, thus delay of 35 days has been occurred. Further it is the say of the applicant that if in this case delay is not condoned then she will loose her valuable right of contesting this matter so there will be irreparable loss to her in this regard. Hence, the present applicant has prayed to condone the delay caused for 35 days.

3. Notice was issued to respondent and respondent No. 2 has appeared before this Court through his learned advocate Mr. N.P. Limbachiya but did not file any written statement.

4. I have heard the Ld. advocate Mr. B.B. Vasava on behalf of the present applicant, he has submitted that there is no reason to disbelieve the facts mentioned in the delay Condonation application. Hence, it can be said that the present applicant has good and sufficient cause for condoning the delay, therefore, the Court should take liberal view for condoning the delay, therefore, he has submitted that this is fit case to condone the delay.

5. While deciding this application, I would like to fortified my view with the decision of Hon'ble Apex Court as well as Hon'ble Gujarat High Court. In the case of ***State of Nagaland Vs. Lipok AO & Ors.*** reported in ***2005(2) Crimes 38 (SC)***, in this case Hon'ble Apex Court has held that ***“the expression “sufficient cause” should be considered with pragmatism in justice-oriented approach rather than the technical detection of sufficient cause for explaining very 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. The Court should decide the matters on merits unless the case is***

hopelessly without merits. No separate standards to determine the cause laid by the State vis/a/vis private litigant could be laid to prove strict standards of sufficient cause". Similar view also adopted by the Hon'ble Gujarat High Court in the case of Mahendrabhai Nagjibhai Patel Vs Ilaben Mahendrabhai Patel reported in 2005 (2) GLH 150 wherein Hon'ble Gujarat High Court held that "the approach of the Court should be liberal and pragmatic: when an application under Section 5 of the Limitation Act is placed praying for condonation of delay. It seems that percolation process is very slow. The types of litigation and intention of parties praying condonation of delay are also relevant criteria and it becomes possible for the Court to assess such aspects from the facts emerging from record. In a given case, the delay of couple of days may not be found explained satisfactorily and on the other hand, the Courts have gracefully condoned the delay of even several days or months. It is true that in the cases where the petitioners have no merits at all, the Court can think conservatively while dealing with condonation of delay plea".

6. So in view of above discussed above, there is a good ground from condoning of delay that while deciding application of delay condonation the pragmatic approach should be taken by the Court and here the present applicant's circumstances itself suggest that lenient view

required to be taken while deciding the present application and also considering aforesaid legal position. So, it is my considered opinion that the present applicants's application is required to be condoned, hence following order is passed:

ORDER

1. The applicant's application CMA (DC) No. 40-2022 for condonation of delay of 35 days is hereby allowed.
 2. The delay caused in filing the appeal is hereby condoned.
 3. The appeal be numbered and registered accordingly.
- Signed and Pronounced in open Court today on 19th day of December, 2022.

Place : Rajpipla
Date: 19/12/2022

(Ambalal R. Patel)
Principal District Judge,
Rajpipla, District Narmada
Code No.: GJ00404