

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CIVIL APPLICATION (FOR CONDONATION OF DELAY) NO. 15 of 2023****In F/SECOND APPEAL NO. 23482 of 2022****With****F/SECOND APPEAL NO. 23482 of 2022****With****CIVIL APPLICATION (FOR STAY) NO. 1 of 2022****In F/SECOND APPEAL NO. 23482 of 2022**=====
KARUNA SAGAR MANDIR TRUST & ORS.**Versus****HASMUKHLAL RATILAL & ORS.**
=====

Appearance:

MR P S DATTA(11324) for the Applicant(s) No. 1,2,7

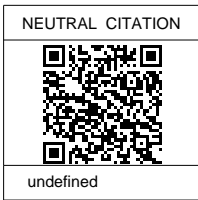
DELETED for the Respondent(s) No. 13,14

MR MANAN A SHAH(5412) for the Respondent(s) No.

1,10,11,12,3,4,5,6,7,8,9

NOTICE SERVED BY DS for the Respondent(s) No. 2
=====**CORAM:HONOURABLE MR. JUSTICE J. C. DOSHI****Date : 18/06/2024****ORAL ORDER**

1. By way of this application, the applicants pray to condone the delay of 1662 days caused in preferring captioned second appeal against the impugned judgment and decree *inter alia* on the ground that the trustees of Karuna Sagar Mandir Trust (in short "the trust") have come on record by way of change report in the year 2018 and then they came to know about selling of the trust property by the previous trustees without obtaining necessary permission u/s 36 of the Bombay Public Trust Act (in short "the Act").

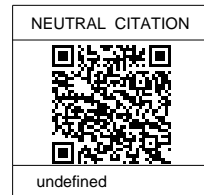


2. Heard learned advocate Mr. PS Dutta for the applicants and learned advocate Mr. Manan Mehta for the respondents except respondent No.2.

3. Learned advocate Mr. PS Dutta for the applicants would submit that the applicants who are trustees of the trust came to know about the judgment and decree passed by the concerned Court for specific performance of the immovable properties belongs to the trust once the execution proceedings are filed and the notices are served. Thus, the present trustees of the trust thought it fit to file second appeal, but delay is caused. Referring to grounds Nos.6 to 11 in the application memo for condonation of delay, learned advocate Mr. Dutta would submit that the applicants have no personal interest in the matter in dispute and are prosecuting the lis *inter alia* on the ground that the trust properties are being vested and are in danger. He would further submit that glaring defect appearing in the impugned judgment are that in absence of statutory permission u/s 36 of the Act, the specific performance of the properties is granted.

3.1 Insofar as explanation of the delay is concerned, learned advocate Mr. Dutta would submit that the length of delay may not be considered, but since sufficiently explained, the applicants, who are prosecuting the lis for the cause of the trust should not be jettisoned on the technical ground, but the Court is required to take liberal approach.

3.2 Upon above submission, learned advocate Mr. Dutta requests to allow this application and to condone the delay.



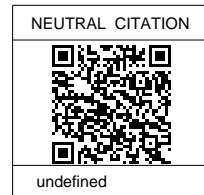
4. On the other hand, learned advocate Mr. Manan Shah for the respondents would submit that the execution petition is filed in the year 2015 and notices were served to the trustees of the trust at the relevant time in the year 2015 itself; the applicants being the trustees of the trust have had knowledge of the decree for which specific performance is sought for in the year 2015 itself, but they remained in slumber and did not prefer appeal within the time period and allow the limitation to go. He would further submit that on passage of time, on expiry of limitation, the right is perfected in favour of the defendants herein and in view of that, delay should not be granted by taking liberal approach and excuse should not be given for passing the limitation.

5. In support of the submission, learned advocate Mr. Manan Shah has relied upon judgment in case of State of U.P. and others Vs.M/s Satish Chand Shivhare and brothers reported in 2022 LiveLaw (SC) 430.

6, Upon above submission, learned advocate Mr. Manan Shah requests to condone the delay.

7. Having heard learned advocates appearing for the respective parties, at the outset, I may refer the ratio laid down therein is also referred in many judgments, but in the case of Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy & Others, (2013) 12 SCC 649, the Hon'ble Apex Court has made following observations:-

“21. From the aforesaid authorities the principles that



can broadly be culled out are:

21.1. (i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

21.2. (ii) The terms sufficient cause should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

21.3. (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4. (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

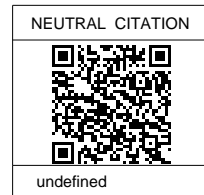
21.5. (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.6. (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

21.7. (vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.8. (viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

21.9. (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both



parties and the said principle cannot be given a total go by in the name of liberal approach.

21.10. (x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

21.11. (xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

21.12. (xii) The entire gamut of facts are to be carefully scrutinised and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

21.13. (xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.”

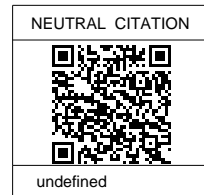
8. Recently, the Hon’ble Apex Court in case of Union Of India Versus Jahangir Byramji Jeejeebhoy (D) Through His Lr reported in 2024(2) GLH 217, added some more guidelines to the aforesaid principles laid down by the Hon’ble Apex Court.

“22. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are:

22.1. (a) An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

22.2. (b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

22.3. (c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made

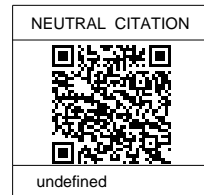


as that is the ultimate institutional motto.

22.4. (d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters.”

9. A straight jacket formula cannot be accepted for deciding the application for condonation of delay. The principle of condonation of delay is based upon public policy and should not be dealt with in a routine manner or on the basis of individual philosophy which is basically subjective. Liberal, pragmatic and justice-oriented approach is accepted phenomena. Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis. Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact. The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. In the present case, the applicants came out with the case that they are impleaded as trustees by Scheme Application No.5 of 2018 on 17.9.2018 by the Charity Commissioner and the order was passed on 14.12.2019 and subsequent thereto, the applicants have come to know about the impugned proceedings when they have taken charge as trustees of the trust.

10. It is subsequently argued that the former trustees without following the procedure laid down in the Act and without obtaining necessary permission u/s 36 of the Act, have executed the agreement to sell. This legal aspect has not been considered by the learned Court below, but erroneously granted specific



performance of the trust properties. It is submitted that there is legal bar in operation. The submission appears to have force. Though the scope of the delay does not allow this Court to decide the matter on merits, but, it is a case where the immovable properties of the trust being a religious trust have been sold by one of the trustees without obtaining necessary permission u/s 36 of the Act. The subsequent trustees i.e. present applicants came to know about the same once their scheme application is allowed and they are joined as trustees of the trust.

11. Learned advocate for the respondents would submit that even after the present applicants are appointed as trustees of the trust, they did not take any action for sufficiently long time and that will preclude them from public cause on the ground of sufficient explanation. I am not impressed with the submission canvassed by the learned advocate for the respondents. I may refer para 6 and 7 of the application memo, which reads as under:-

“6. It is further respectfully stated and submitted that the applicant Nos.3 to 6 were added as Trustees after the application was made before the learned Joint Charity Commissioner In Scheme Miac. Application No.5 of 2018 on 17.9.2016 and the learned Charity Commissioner passed order an 4.12.2019 to add applicant Nos.3 to 6 as Trustees of the Trust.

7. It is further respectfully stated and submitted that after applicant Nos.3 to 6 were added as Trustees vide order dated 4.12.2019, they took copies of the orders passed by the learned First Appellate Court. It so



further respectfully stated and submitted that they decided that the impugned order are contrary to the interest of the Trust and challenged. requires in to be further respectfully stated and submitted that thereafter, due to outbreak of Covid-19, they were not in a position to prefer the appeal immediately. further respectfully stated and submitted that the impugned orders are even otherwise completely nullity as the Trust property in question cannot be ordered to be sold in such a manner. Agreement to sell stand is also nullity and vald and contrary to the Provisions of the Trust Act. Therefore, there is nelay caused In preferring the second Appeal. It is further respectfully stated and submitted that the delay may be condoned substantial In the interest justice. of The applicants have a meritorious case and are likely to succeed in the appeal. It is further respectfully stated and submitted that the applicants have not remained negligent in preferring the appeal. It is further respectfully stated and submitted that no prejudice would be caused to the other side If the delay is condoned It is further respectfully stated and submitted that in fact, the latest Trustees were initially not aware about the orders of the learned Trial Court as well as of the learned First Appellate Court and upon becoming aware about the same, immediate steps have been taken. Hence, the delay may kindly be condoned in the Interest of Justice.”

12. The delay appears to be sufficiently explained. It is a long delay, but no mala fide can be attributed to the applicants. Since the applicants are the trustees fall under the category representing the collective cause, it should be given some acceptable latitude. The fact is undeniable that the order of specific performance is made by the learned Court below without referring to section 36 of the Act. Learned advocate for the respondents could not point out that before passing the judgment and order for specific performance of the trust



properties, necessary permission as required u/s 36 of the Act was obtained. Under these facts and circumstances, latitude is required to be given to the applicants, as they are not prosecuting personal cause, but prosecuting the cause as trustees of the religious trust.

13. At this stage, I may refer to judgment of Hon'ble Apex Court in the case of **Collector, Land Acquisition, Anantnag and Anr. v/s. Mst. Katiji and Ors. [AIR 1987 SC 1353]**. In the said judgment, it is observed by Hon'ble Supreme Court in para 3 as under :-

“3. The legislature has conferred the power to condone delay by enacting [Section 51](#) of the Indian Limitation Act of 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 courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:-

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being 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.



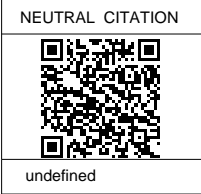
3. *"Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.*

4. *When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.*

5. *There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.*

6. *It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.*

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the 'State' which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a 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 experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file pushing, and passing-on-the-buck ethos, delay on its part 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. The Courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also



the same approach has to be evidenced in its application to matters at hand with the end in view to do even handed justice on merits in preference to the approach which scuttles a decision on merits. Turning to the facts of the matter giving rise to the present appeal, we are satisfied that sufficient cause exists for the delay. The order of the High Court dismissing the appeal before it as time barred, is therefore, set aside. Delay is condoned. And the matter is remitted to the High Court. The High Court will now dispose of the appeal on merits after affording reasonable opportunity of hearing to both the sides.”

14. Resultantly, present application is allowed and delay of 1662 days caused in preferring captioned second appeal is hereby condoned.

SHEKHAR P. BARVE

(J. C. DOSHI,J)