

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6995 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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R V PATEL & ANR.

Versus

ASSTT. DIST. REGISTRAR OF CO-OP. SOCIETIES & ORS.

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Appearance:

MR ARUN H MEHTA for Petitioners  
MR ND GOHIL for Respondent No. 1  
None present for other Respondents.

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 30/09/96

ORAL JUDGEMENT

1. Having heard the learned counsel for the parties, I am satisfied that this Special Civil Application deserves to be accepted.

2. The appeal filed by the petitioners has been rejected by the Tribunal on the ground of delay in filing of the same. There was a delay of about 64 days in filing of the appeal, but the Tribunal has not considered

that the other persons have already filed the appeal in which the petitioners were also the respondents. Though the petitioners should file a separate appeal, but under the legal advise given to them they were satisfied with the filing of the appeal with some other persons in which they have been impleaded as party respondent. Subsequently, the advise has been given to them by the advocate that they should file separate appeal and accordingly they filed the separate appeal. The Tribunal's approach that every day delay should be explained is not the only consideration. Over all facts should have been considered and where the explanation given by the petitioner for delay in filing of the appeal is not rejected, then normally the order should have been of the condonation of delay.

3. The counsel for the respondent Shri Gohil has also not seriously opposed the Special Civil Application. The delay should have been taken seriously only where it is a culpable delay or deliberate and wilful delay. Bonafides has to be considered and I do not find anything on the record that the Tribunal has considered it to be a case of a malafide act on the part of the petitioners.

4. Taking into consideration these facts, this S.C.A. deserves to be accepted. Order accordingly. The judgment of the Tribunal is set aside and delay in filing of the appeal is condoned. Rule made absolute.

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