

SUMMARY SUIT NO.125 OF 2012.**ORDER BELOW EXH.20**

1. The present application has been filed by the defendant no.2 with a request to condone the delay of 50 days in filing leave to defend in present suit, after receiving the summons for judgment defendant no.2 is required to file the application for leave to defend within 10 days. But defendant no.2 could not file the said application within the stipulated period. Hence, this application is being filed for condonation of delay.

2. It is further averred by the defendant no.2 that the summons has been received on 31/01/2013 and due to heavy pressure of year ending work in the bank and since the matter involves understanding of the subject by advocate of the bank in consultation of bank officers, same could not be done in time and thus, the delay of 50 days is occurred in filing the leave to defend. It is further stated that the nominal delay of 50 days be condoned in the larger interest of justice. Moreover, if delay is condoned, no harm or injury is likely to be caused to the plaintiff. But if the delay is not condoned then the defendant no.2 bank will suffer irreparable loss, which is a public institution. Hence, defendant no.2 prayed to condone the delay of 50 days and permit to file the application for leave to defend in interest of justice.

3. As against this, the plaintiff through his Ld.Advocate has filed affidavit in reply vide Exh.23 and denied the contentions and averments of the application of the defendant no.2 to condone the delay. Moreover, the facts which is contended by the defendant is shameful and the approach of defendant no.2 is careless when it suggest that the delay of 50 days is " normal ". Further, the ground is absolutely imaginary and unjustified, since the year ending work is carried out by several employees, while application for leave to defend has to be prepared by legal branch/legal officer and not by the employees who are indulged in usual work of the bank. Further, the bank has miserably failed to give any acceptable and cogent reason for condoning such delay and therefore, merely the ground that it is the public institution delay is required to be condoned, is not permissible and not tenable such approach is depreciated and so the application of the defendant no.2 required to be rejected.

4. Heard,Ld. Advocates for both the parties and have gone through the record and citations produced on record by Ld. Advocates.

5. In this matter, according to defendant no.2 the delay of 50 days caused because to heavy pressure of year ending work in the bank and since the matter involves understanding of the subject by Advocate of the

bank in consultation of bank officers, same could not be done in time. Hence, the delay of 50 days has been occurred. There is no any willful or malafide intention on the part of the defendant. As against this, the Ld. Advocate for the plaintiff have averred in his reply that these grounds are imaginary and unjustified. But, in my view 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, then delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties. In the present matter it is evident from the facts that the delay caused in filing the application for leave to defend was result of all the necessary and unavoidable formalities and was bonafied and not deliberate or intentional. Court should not take too strict stand which will cause injustice while considering the application for condonation of delay but in interest of justice. As per the say of defendant no.2 the delay of 50 days but in view of the filing date of this delay application, there, is some variation in days, apart from that the length of delay is not important but the cause for delay mentioned in the application is the important.

6. However, considering the facts and circumstance of the case, if this application is granted with a condition to pay the costs by the defendant to the plaintiff, then it would meet the end of justice. Hence, in the

interest of justice, I pass the following order.

:: ORDER ::

* The present application to condone the delay in filing the application for leave to defend is hereby allowed.

* The defendant no.2 should pay the cost of this application Rs.15,000/- to the plaintiff of the suit on or before the next date from the date of this order and after then the application for to defend will be taken into the record of the case/suit.

* No order as to costs.

Pronounced in the open court on this 18th day of October, 2014.

Date : 18/10/2014

Place : VADODARA

**MR. HARDIK ARVINDKUMAR UPADHYAY
GJ00635,
5th Addl. Sr. Civil Judge
VADODARA.**