

**IN THE COURT OF 10th ADDITIONAL DISTRICT JUDGE,
AT SURAT**

CIVIL MISCELLANEOUS APPLICATION NO. 280 OF 2017

Exh.--

Appellant :-

1. M/S. HANJAR FIBER LTD.

Addressee of: Ground Floor, Hanjar
Chambers, Zhampa Bazar, Surat.

Through authorized representative
Shri Pradeepkumar Pandya

2. IRFAN ASRAF FURNITUREWALA

Addressee of: 54, Zohara Vila, Shalimar
Society, Adajan Patiya, Surat.

Residing at: 702, Seventh Floor, Aakrity
Solaris, N.S. Fadke Marg, Saivadi, Andheri
(E), Mumbai.

3. NADIM ASRAF FURNITUREWALA

Addressee of: 54, Zohara Vila, Shalimar
Society, Adajan Patiya, Surat.

Residing at: 702, Seventh Floor, Aakrity
Solaris, N.S. Fadke Marg, Saivadi, Andheri
(E), Mumbai.

4. TAUHID ASRAF FURNITUREWALA

Addressee of: 54, Zohara Vila, Shalimar
Society, Adajan Patiya, Surat.

Residing at: 702, Seventh Floor, Aakrity
Solaris, N.S. Fadke Marg, Saivadi, Andheri
(E), Mumbai.

VERSUS

Respondent:-**THE MEMON CO. OP. BANK LTD.,**

Addressee of: 38, Patel & Soni Arcade, First Floor, 234, Belasis Road, Nagpada, Jection, Mumbai, 400008.

Appearance:

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Shri H. P. Patel- Ld. Counsel for the Appellants.

Shri A.R. Mehta Ld. counsel for the Respondent.

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-::JUDGMENT::-

[1] Present application has been filed by the applicant/appellant for condonation of delay in moving the restoration application. It is submitted that the objections applications filed by the applicants was dismissed in default on 19.08.2017 and thereafter, the certified copy was applied on 19/08/2017 itself and was received by the applicant on 05/10/2017 and as such there is no delay in moving the restoration application. It is further submitted that however in order to avoid any technical objection the present delay condonation application has been filed on 01/11/2017.

[2] On the contrary, Ld. Counsel for respondent has vehemently opposed the present application and has submitted that the applicants had sufficient time to move the application in time but they failed to do so. It is further submitted that the appellants are required to explain each day of delay and it should not be taken casually as after the expiry of limitation period, a valuable right is vested with the respondent which would otherwise be snatched away from the respondents, if the delay in filing the application is condoned. It is further submitted that the certified copy of the order was prepared on 25/09/2017 and as such the applicant was required to move the present application within a period of 30 days but they moved the present application on 01/11/2017 with the delay of 6 days.

[3] I have gone through the application and the arguments of the respective counsels and also perused the record. The application was dismissed in default on 19/08/2017 and certified copy of order was applied on same day and was prepared on 25/09/2017. The application of restoration was therefore required to be moved within 30 days i.e. 25/10/2017. However, the same was filed on 1/11/2017. Keeping in view that 31/10/2017 was holiday, there was a delay of 6th days in moving the present application. Keeping in view the fact that 28th & 29th were also holidays and there is a delay of 6th days in moving the present application, I deem it to appropriate take the liberal view of the same. It is further settled law that the delay has to be construed liberally and should be condoned unless gross negligence is apparent from the facts on record.

[4] Thus, keeping in view, facts and circumstances of the present case, following order is passed.

::- ORDER -::

The present application is allowed and delay caused filing restoration application is hereby condoned subject to the cost of Rs. 2000/- to be deposited by the applicant before District Legal Service Authority within 15 days from the date of receipt of this order. Registry is directed to register the Restoration Application accordingly.

Pronounced in open court today on this 16th day of March, 2018.

Date: 16/03/2018

(PRASHANT JAIN)
10th Addl. District Judge, Surat
UID Code: GJ01507