



Received on : 14.10.2022
Registered on : 14.10.2022
Decided on : 14.02.2023
Duration : Y. M. D.
00 — 04 — 00

Exh. 05

IN THE COURT OF 11th ADDITIONAL DISTRICT JUDGE,
GONDAL, RAJKOT

CIVIL MISCELLANEOUS APPLICATION NO.140 OF 2022

PARTNERS OF SHRIJI KOLSA;

1) Satishbhai Laljibhai Vadodariya

Age: 33, Occu.Business, Religion: Hindu,

Address- Moruka, Ta. Talala, Dist. Gir Somnath

2) Meman Rafiq Adreman

Age: 60, Occu.Business, Religion: Muslim,

Address- Shapar Veraval, Dist. Rajkot

..... Applicants

V E R S U S

LEGAL HEIRS OF DECEASED NANJIBHAI DHANJIBHAI;

Bharatbhai Nanjibhai Korat

Age: 55, Occu.Business, Religion: Hindu,

Address- 20, Jagnath Plot, Patel Building, Rajkot

..... Opponent

Appearance:-

Shri R. S. Nagori, Learned Advocate for the Applicants.

No one appeared for opponent.

Subject:- Application for condonation of delay.

-:: JUDGMENT ::-

- (1) The present Applicants/Original plaintiffs have preferred this Civil Misc. Application seeking condonation of delay in preferring Miscellaneous Civil Appeal against the order dated 14/09/2022 passed below Exh.5 by Ld. Principal Civil Judge, Kotda sangani in RCS No.09/2021 by which the Ld. Judge has rejected the application of the plaintiff.
- (2) It is the say of the present applicants that the impugned order was passed by the Ld. Lower Court on 14/09/2022, but due to the non information of the Regular Civil Suit, the Miscellaneous civil appeal could not be filed within the stipulated period and finally filed on 14/10/2022 and now, the present appeal is preferred with the instant delay condonation application. It is further submitted by the applicants that for this reason there occurred a delay of only '1 day' in preferring the Miscellaneous civil appeal which may kindly be allowed in the interest of justice.
- (3) Notice was issued to the opponent and no one appeared for opponent. Learned advocate Shri R. S. Nagori has appeared for applicants.

(4) I heard the learned counsel of the applicants and perused the record. Admittedly, there is only '1 day' delay and the fact of the non information of the applicants should not be ignored altogether. As per the settled principle of law, without going into the technicalities of the cases, the case must be decided on merits and if any parties did not get such opportunity for defend the case then that person will be suffered a lot and if the present application will be considered then the opposite party could not suffered a loss due to the considering the delay application.

(5) Before finally concluding, some authorities of the Hon'ble Supreme Court are quoted below:

In Civil Appeal No. 2075/2010

Oriental Aroma Chemical Industries Ltd.

Vs.

Gujarat Industrial Development Corporation and another;

Hon'ble Supreme Court has held that: -

"..The expression 'sufficient cause' employed in Section 5 of the Indian Limitation Act, 1963 and similar other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which sub serves the ends of

justice. Although, no hard and fast rule can be laid down in dealing with the applications for condonation of delay, this Court has justifiably advocated adoption of a liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate."

In Rafiq Vs. Munshilal, AIR 1981 SC 1400

Hon'ble Supreme Court has reiterated that: -

"...the expression 'sufficient cause' is to be interpreted in liberal manner so as to advance the cause of substantial justice particularly when no negligence or inaction or want of bona fide is imputable to the party."

- (6) The entire crux of all the decisions is that the Courts are bestowed with the power to condone the delay if 'sufficient cause' is shown for not availing the remedy within the stipulated time but if any negligence, inaction or want of bonafide is imputable to the applicants the ground of 'sufficient cause' lapses and in such a case the delay shall not be condoned. 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.

(7) In the present case, such want of bonafide or inaction is not seen on the part of the applicants which would justify this Court to curtail his right of being heard on merits. Hence, in my considered opinion, the applicants must be given an opportunity of challenging the impugned order by way of Miscellaneous Civil appeal. Considering the facts that the delay is of very short duration and the opponent has also not raised any objection, the delay of only '1 day' in preferring the Miscellaneous civil Appeal requires to be condoned. Accordingly, in the light of the aforesaid factual as well as legal points discussed herein above, I hold that the present delay condonation application deserves to be allowed and hence, the following order is passed:-

-: FINAL ORDER :-

- The present Civil Miscellaneous Application No. 140 of 2022 is **allowed**.
- The delay in preferring the Miscellaneous civil appeal against the order dt. 14/09/2022 passed

below Exh.5 by Ld. Principal Civil Judge, Kotda sangani is hereby **condoned**.

- The matter be sent back to the registry for registering and numbering the Miscellaneous civil appeal.
- No order as to cost.

The order is pronounced in the open Court on 14th day of February, 2023 under my hand and seal.

Date:- 14/02/2023

Place:- Gondal

(Viral Hemrajbhai Patel)
11th Addl. District Judge,
G O N D A L.
Code No.GJ-00736