IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 12535 of 2018

FOR APPROVAL AND SIGNATURE:

HONOURABLE DR. JUSTICE ASHOKKUMAR C. JOSHI

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	**NO**
2	To be referred to the Reporter or not ?	**YES**
3	Whether their Lordships wish to see the fair copy of the judgment ?	**NO**
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	**NO**

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AYESHABEN WD/O. AHMED ADAM ALINATHA & 8 other(s)

Versus

HURIBEN ISMAIL ALI SINCE DECEASED THROUGH LEGAL HEIRS , RESP. NO 2 to 11 & 10 other(s)

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Appearance:
MR. VARUN G RAI(7135) for the Petitioner(s) No. 1,2,3,4,5,6,7,8,9
DECEASED LITIGANT for the Respondent(s) No. 1
MR FAIMUDDIN SAIYED(5483) for the Respondent(s) No. 10,11,2,3,4,5,6,7,8,9

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CORAM:**HONOURABLE DR. JUSTICE ASHOKKUMAR C. JOSHI**

Date : 22/02/2022

ORAL JUDGMENT

1. This writ petition under Articles 226 and 227 of the Constitution of India assails the judgment and order dated 20.06.2018 passed by the learned 4th Additional District Judge,

Bharuch in Misc. Civil Appeal No. 10 of 2017. By the said judgment and order, the learned first appellate Judge was pleased to condone the delay of 02 years and 05 months caused in filing the execution petition against the judgment and decree dated 26.08.2001, passed by the learned Civil Judge (J.D.), Amod in Regular Civil Suit No. 53 of 1999.

2. Facts in nutshell of the case on hand are that the petitioners are the original defendants in the captioned civil suit filed by the respondents herein – original plaintiffs for declaration and permanent injunction before the learned civil Court concerned at Amod, District: Bharuch, which came to be decreed by order dated 26.08.2001 as compromise took place between the parties. In filing of the execution petition, since there was a delay of about 02 years and 05 months, the respondents – plaintiffs filed a Civil Misc. Application No. 1 of 2016 before the learned Principal Civil Judge, Amod, which came to be rejected *vide* order dated 06.03.2017 and hence, the respondents – plaintiffs filed the aforesaid appeal before the learned first appellate Judge, which came to be allowed by way of impugned judgment and order, being aggrieved of which, the petitioners – original defendants are before this Court by this petition.

3. Heard, learned advocate Mr. Varun G. Rai for the petitioners – defendants and learned advocate Mr. Faimuddin Saiyed for the respondents – plaintiffs.

3.1 The learned advocate for the petitioners – defendants, with all vehemence at his command, submitted that the learned first appellate Judge has committed a grave error in allowing the appeal and thereby, condoning the delay in filing the execution

petition, which was filed almost after 15 years of the judgment and decree is passed in the civil suit, that too, without assigning any reasons for the same. It is submitted that the grounds for delay were not germane and no sufficient cause was shown so as to condone the delay and accordingly, he requested that this petition may be allowed and the impugned judgment and order may be set aside.

4. *Per contra*, learned advocate Mr. Faimuddin Saiyed for the respondents – plaintiffs, while resisting this writ petition and supporting the impugned judgment and order submitted that the learned first appellate Judge has rightly allowed such application as sufficient cause was shown and was appreciated by the learned first appellate Judge in proper perspective. He submitted that the learned first appellate Judge has rightly observed that the reasons stated in the appeal memo are true and genuine and the appellant is required to be given a chance to file the execution petition. He further submitted that the consent decree was passed in the main suit, which could not be executed in time. Further, the same is not challenged for any reason whatsoever and accordingly, the said decree has attained finality. Besides, the original plaintiff had died and his heirs were not knowing about the compromise decree and when they came to know, the wife of the original plaintiff being a lady and since was not knowing the nitty-gritty of law, could not file the execution petition in time and delay had occurred, which is rightly condoned by the learned first appellate Court and hence, he submitted that no interference is required at the hands of this Court and this petition is requested to be dismissed.

5. No other and further submissions have been made.

6. Regard being had to the submissions made and considering the material placed on record, it appears that the Regular Civil Suit No. 53 of 1999 filed by the respondents herein – original plaintiffs came to be decreed by judgment and decree dated 26.08.2001 as compromise took place between the parties. Against the said decree, execution petition was required to be filed, however, since it could not be filed in time, the plaintiffs preferred a civil misc. application before the learned trial Judge, which came to be rejected against which, an appeal came to be preferred, which is allowed and hence, the petitioners – original defendants are before this Court challenging the same.

6.1 The learned advocate for the petitioners has submitted that after lapse of period of almost 15 years, the delay has been condoned. Whereas, the ground sought to be canvassed for delay if seen, it is to the effect that original plaintiff had died and his heirs were not in know of the compromise decree took place between the parties. Further, the wife of the deceased plaintiff being a lady, was not knowing the legal nitty-gritty and hence, could not file the execution petition in time and accordingly, the delay of more than two years had occurred in filing the execution petition.

6.2 In this regard, if the provisions under the Limitation Act, 1963 *qua* the execution of any decree are referred to, they are as under:

136.	*For the execution of any decree (other than a decree granting a mandatory injunction) or order of any civil court.*	*Twelve years.*	*[When] the decree or order becomes enforceable or where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, when default in making the payment or delivery in respect of which execution is sought,*

			takes place: *Provided that an application for the enforcement or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation.*

6.3 Thus, the prescribed period of limitation for the execution of any decree (other than a decree granting a mandatory injunction) or order any civil court is twelve years. In this case, the compromise decree is passed on 26.08.2001, which was sought to be executed in 2016, which ought to have been done by 26.08.2013 and thus, delay of about 02 years and 05 months has been occurred.

6.4 It is trite that in a delay application, sufficient cause is the paramount consideration and if sufficient cause is shown, the Court should generally condone the delay. However, if the sufficient cause is imbibed with the laxity on the part of the delayer despite due knowledge, then Court should restrain itself from encouraging such practice and condone the delay.

6.5 The Apex Court, in ***Indian Oil Corporation Ltd. and Ors. vs. Subrata Borah Chowlek and Ors. (12.11.2010 – SC): MANU/SC/1252/2010*** has observed as under:

> *"7. Having heard the Learned Counsel, we are of the opinion that in the instant case a sufficient cause had been made out for condonation of delay in filing the appeal and therefore, the High Court erred in declining to condone the same. It is true that even upon showing a sufficient cause, a party is not entitled to the condonation of delay as a matter of right, yet it is trite that in construing sufficient cause, the Courts generally follow a liberal approach particularly when no negligence, inaction or mala fides can be imputed to the party. (See: Shakuntala Devi Jain v. Kuntal Kumari and Ors. MANU/SC/0335/1968 : (1969) 1 SCR 1006; The State of West Bengal v. The Administrator,*

Howrah Municipality and Ors. MANU/SC/0534/1971 : (1972) 1 SCC 366; N. Balakrishnan v. M. Krishnamurthy MANU/SC/0573/1998 : (1998) 7 SCC 123; Sital Prasad Saxena v. Union of India and Ors. MANU/SC/0294/1984 : (1985) 1 SCC 163).

8. In Ramlal, Motilal and Chhotelal v. Rewa Coalfields Ltd. MANU/SC/0042/1961 : (1962) 2 SCR 762, this Court held that:

> *In construing Section 5 it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favor of the decree-holder to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired the decree-holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge, and this legal right which has accrued to the decree-holder by lapse of time should not be light-heartedly disturbed.* ***The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown discretion is given to the court to condone delay and admit the appeal. This discretion has been deliberately conferred on the court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice****. As has been observed by the Madras High Court in Krishna v. Chathappan ILR (1890) 13 Mad 269 "Section 5 gives the court a discretion which in respect of jurisdiction is to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood; the words 'sufficient cause' receiving a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fide is imputable to the Appellant.*

9. Similarly, in Ram Nath Sao Alias Ram Nath Sahu and Ors. v. Gobardhan Sao and Ors. MANU/SC/0135/2002 : (2002) 3 SCC 195, this Court observed that:

> *But one thing is clear that the courts should not proceed with the tendency of finding fault with the cause shown and reject the petition by a slipshod*

> *order in over-jubilation of disposal drive. Acceptance of explanation furnished should be the rule and refusal, an exception, more so when no negligence or inaction or want of bona fides can be imputed to the defaulting party. On the other hand, while considering the matter the courts should not lose sight of the fact that by not taking steps within the time prescribed a valuable right has accrued to the other party which should not be lightly defeated by condoning delay in a routine-like manner. However, by taking a pedantic and hyper technical view of the matter the explanation furnished should not be rejected when stakes are high and/or arguable points of facts and law are involved in the case, causing enormous loss and irreparable injury to the party against whom the lies terminates, either by default or inaction and defeating valuable right of such a party to have the decision on merit. While considering the matter, courts have to strike a balance between resultant effect of the order it is going to pass upon the parties either way."*

6.6 Thus, the consideration which cannot be ignored is that if sufficient cause for excusing delay is shown, discretion is given to the Court to condone delay and admit the appeal. This discretion has been deliberately conferred on the Court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice. ***Ignorantia juris non excusat*** (*latin for "ignorance of the law excuses not*") is a legal principle holding that a person who is unaware of a law may not escape liability for violating that law merely by being unaware of its content. Nonetheless, it is also trite that every case should be decided on merits rather than mere technicalities, save and except they are inexcusable. Accordingly, in the totality of the facts and circumstances of the case, this Court is of the opinion that the learned first appellate Court has rightly exercised the discretion with a view to advance the substantial justice. Hence, this petition deserves no consideration being devoid of any merits.

7. For the reasons and the observations made herein above, this petition fails and is dismissed accordingly. Rule is discharged. In the facts and circumstances of the case, there shall be no order as to costs. Interim relief, if any, shall stand vacated forthwith.

8. Before parting, the Court may not lose the sight of the fact that the learned first appellate Judge, while allowing the appeal by way of the impugned judgment and order, has recorded the submissions on behalf of the parties in detail, but so far as the findings are concerned, they are *sans* recording the detailed reasons and only reference is made. For ready perusal, findings of the learned first appellate Judge are extracted herein below:

> *"14.* ***REASONS***
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> *In view of Appeal Memo vide Exh. 1 and the facts stated in the written arguments vide Exh. 13 and written arguments of respondent side vide Exh. 12, this court has verified the order of Ld. Trial Court in Civil Miscellaneous Application No. 01/2016 and also verified the authorities namely :-*
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> > *1. Babubhai Bhagwanji Mehta & Ors Vs. State of Gujarat*
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> > *2. Mahendrabhai Nagjibhai Patel Vs. Ilaben Mahendrabhai patel reported in 2005 (2) GLH 150 C.K. Buch. J.*
> >
> > *3. Pushpaben Balwantrai V/s. Nandkumar Ramanlal reported in 2004(2) GLH 350 P. B. Majmudar, J.*
> >
> > *4. M. Jagdamba Deyiing & Pringing & Ors V/s. Rajmumar Misra Cp. Surat Silk Labour Union 2006 91) GLH 545*
>
> *and found that the reasons stated in the appeal memo are true and genuine and the appellant is required to be given a chance to file Darkhast in Miscellaneous Civil Application*

No. 1/16, which is required to be registered and the present delay condone application is deserves to be granted as submitted before the Ld. Trial Court as the Ld. Trial Court has wrongly disallowed the delay condone application and the Civil Miscellaneous Application. Hence, I allow this appeal as per the final order as follows:

-:: O R D E R ::-

1. The application of the applicant is hereby allowed.

2. The delay of 02 years and 05 months caused in filing the darkhast against the judgment and decree passed by Ld. Civil Judge (JD), Amod is hereby condoned.

3. The prayer of Miscellaneous Civil Application of appellant is hereby allowed as prayed in para 10(1) of the exh. 1 of original appeal memo and the order of Ld. Trial Court is set aside herewith as passed in Civil Miscellaneous Application No. 1/16.

4. The delay application along with the Darkhast is hereby ordered to be registered and to proceed the matter of Civil Miscellaneous Application No. 1/16 on merits.

5. The Registry is directed to register the darkhast of the applicant for further proceedings.

6. No order as to costs.

Signed & Pronounced in the open Court on today on 20th June, 2018."

8.1 Thus, the learned first appellate Judge has summed up as aforesaid while deciding the application.

8.2 It is stated that proper reasoning is the heartbeat of a judgment/order. Detailed reasoning does not mean to have unwarranted repetition but it should be terse and to the point. It can be summed up in few lines also, but that must go to the root of the controversy and explanation thereto. The aforesaid should be weighed with by all the Presiding Officers while dealing with a

case.

8.3 Reasoned order furthers the cause of justice as well as avoids uncertainty it helps in the observance of law of precedent. Lack of reasons introduces an element of uncertainty, dissatisfaction and give entirely different dimensions to the questions of law raised before the higher/appellate courts. The Court should provide its own grounds and reasons for rejecting claim/prayer of a party whether at the very threshold *i.e.* at the admission stage or after regular hearing, howsoever precise they may be. Following this very view, the Supreme Court in the decision in ***State of Rajasthan v. Rajendra Prasad Jain Criminal Appeal No. 360/2008 (Arising out of SLP (Crl.) No. 904/2007)*** observed that, "*reason is the heartbeat of every conclusion, and without the same it becomes lifeless.*" Providing of reasons in orders is of essence in judicial proceedings. Every litigant who approaches the Court with a prayer is entitled to know the reasons for acceptance or rejection of such request. Either of the parties to the *lis* has a right of appeal and, therefore, it is essential for them to know the considered opinion of the Court to make the remedy of appeal meaningful. It is the reasoning which ultimately culminates into final decision which may be subject to examination of the appellate or other higher Courts. It is not only desirable but, in view of the consistent position of law, mandatory for the Court to pass orders while recording reasons in support thereof, however, brief they may be. Brevity in reasoning cannot be understood in legal parlance as absence of reasons. While no reasoning in support of judicial orders is impermissible, the brief reasoning would suffice to meet the ends of justice at least at the interlocutory stages and would render the remedy of appeal purposeful and meaningful. It is a settled canon of legal jurisprudence that the Courts are vested

with discretionary powers but such powers are to be exercised judiciously, equitably and in consonance with the settled principles of law. Whether or not, such judicial discretion has been exercised in accordance with the accepted norms, can only be reflected by the reasons recorded in the order impugned before the higher Court. Often it is said that absence of reasoning may *ipso facto* indicate whimsical exercise of judicial discretion.

8.4 The Court cannot lose sight of the fact that a losing litigant has a cause to plead and a right to challenge the order if it is adverse to him. Opinion of the Court alone can explain the cause which led to passing of the final order. Whether an argument was rejected validly or otherwise, reasoning of the order alone can show. To evaluate the submissions is obligation of the Court and to know the reasons for rejection of its contention is a legitimate expectation on the part of the litigant. Another facet of providing reasoning is to give it a value of precedent which can help in reduction of frivolous litigation. Paul D. Carrington, Daniel J Meador and Maurice Rosenburg, Justice on Appeal 10 (West 1976), observed as under:-

> *"When reasons are announced and can be weighed, the public can have assurance that the correcting process is working. Announcing reasons can also provide public understanding of how the numerous decisions of the system are integrated. In a busy Court, the reasons are an essential demonstration that the Court did in fact fix its mind on the case at hand. An unreasoned decision has very little claim to acceptance by the defeated party, and is difficult or impossible to accept as an act reflecting systematic application of legal principles. Moreover, the necessity of stating reasons not infrequently changes the results by forcing the judges to come to grips with nettlesome facts or issues which their normal instincts would otherwise cause them to avoid."*

8.5 The reasoning in the opinion of the Court, thus, can

effectively be analysed or scrutinized by the appellate Court. The reasons indicated by the Court could be accepted by the appellate Court without presuming what weighed with the Court while coming to the impugned decision. The cause of expeditious and effective disposal would be furthered by such an approach. A right of appeal could be created by a special statute or under the provisions of the Code governing the procedure. In either of them, absence of reasoning may have the effect of negating the purpose or right of appeal and, thus, may not achieve the ends of justice.

8.6 Be that as it may. Since the Court is in agreement with the final conclusion arrived at in the appeal (by the impugned order), it is deemed proper not to disturb the same for the aforesaid reasons, nonetheless, it would be apt if a copy of this order be circulated amongst all the learned Judges of the district judiciary for future reference. Accordingly, the registry is directed to circulate this order amongst all the learned Judges of the district judiciary.

[A. C. Joshi, J.]

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