

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 851 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
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 concerned : NO
Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals?

LIABEN @ MINABEN AMBALAL

Versus

VITTALDAS CHHGANLAL SOLANKI

Appearance:

MR RK MISHRA for Petitioner No. 1
MR RAMNANDAN SINGH for Respondent No. 1-2
MR MANISH R BHATT for Respondent No. 3

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 30/09/2002

ORAL JUDGEMENT

The present Civil Revision Application is filed against an order passed by the ld. 8th Joint Civil Judge (SD), Vadodara on 20th July 1998 in an application below Exh. 30 for condonation of delay in filing the review application against the consent decree passed on 28.3.1989.

2. The consent decree was passed in Regular Civil Suit No. 1625/1987 on 28.3.1989. It is the say of the

petitioner that the consent decree was passed as a result of fraud and misrepresentation committed by the respondents and hence the same is not binding to the petitioner. The petitioner therefore filed a review application on 1.7.89. Since the review application should have been filed within 30 days from the date of receipt of certified copy of the decree, and it was actually filed on 1.7.1989 there was delay of 32 days and for condonation of this delay a separate application was preferred. However, the ld. trial Judge has rejected the said application on the ground that new evidence was led along with the application with regard to the sickness of the petitioner. The ld. Judge has further taken the view that as the review application itself is not maintainable there is no question of condoning the delay and hence the delay application was rejected by the ld. trial Judge.

3. It is this order which is under challenge before this Court.

4. Mr. R.K. Mishra, ld. advocate appearing for the petitioner submits that the petitioner was not heard on merits as the ld. trial Judge has refused to condone the delay of 32 days though the said delay was properly explained and there was sufficient cause for condonation of such delay. With regard to the maintainability of the review application, Mr. Mishra has relied on the judgments of the Hon'ble Supreme Court in the case of United India Insurance Co. Ltd. v. Rajendra Singh and Others - (2000) 3 Supreme Court Cases 581, and Banwari Lal v. Smt. Chando Devi (through L.R.) and Anr. - AIR 1993 S.C. 1139. In the first case, the Hon'ble Supreme Court has held that the remedy to move for recalling the order on the basis of the newly-discovered facts amounting to fraud of high degree, cannot be foreclosed in such a situation. In the second case, the Hon'ble Supreme Court has held as under :

"A party challenging a compromise can file a petition under proviso to R. 3 of O.23, or an appeal under S. 96(1) of the Code, in which he can now question the validity of the compromise in view of R. 1A of O.43 of the Code. If the agreement or the compromise itself is fraudulent then it shall be deemed to be void within the meaning of the explanation to the proviso to R.3 and as such not lawful. In the instant case the plaintiff challenged the order recording compromise on the ground his counsel in

collusion with defendant of the said suit had played a fraud on him by filing a fabricated petition of compromise although no compromise had been effected between him and the defendant. Further details of fraud were mentioned in the said petition and it was stated that the alleged compromise itself was void, illegal and against the requirement of O.23, R.3. Therefore the entertaining of the application filed on behalf of plaintiff and considering the question as to whether there had been a lawful agreement or compromise on the basis of which the Court could have recorded such agreement or compromise, by the trial Court was proper. Since the material produced on the record showed that the compromise was not lawful within the meaning of R. 3, the order recording compromise could be recalled."

On the basis of these two judgments, Mr. Mishra has submitted that the ld. trial Judge has wrongly rejected the petitioner's application for condonation of delay and has also wrongly made observations to the effect that the review application is not maintainable.

5. On the other hand, Mr. Ramanand Singh, ld. advocate appearing for the respondents No. 1 and 2 submitted that no error is committed by the learned trial Judge while rejecting the delay condonation application. He has further submitted that compromise was arrived at considering the agreement between the parties and no fraud was committed or no misrepresentation was made. He has further submitted that the review application itself is not maintainable and even if the petitioner has any grievance against the order passed by the trial court on the compromise purshis, the petitioner can file a separate suit challenging the said compromise but in any case the review is not maintainable.

6. After hearing the ld. advocates for both the parties and after considering the order of the ld. trial Judge, I am of the view that at present in this CRA the only issue is as to whether the delay of 32 days is required to be condoned or not. Though sufficient cause was shown by the petitioner before the trial court yet the trial court has not condoned the delay. It is in this view of the matter, the order passed by the trial court is required to be interfered with. However, because of late filing of review application and disposal of the said application for condonation of delay, the respondents were further dragged into litigation, and this Court is of the view that the interests of justice

would be met with if the present CRA is allowed by condoning the delay of 32 days occurred in filing the review application before the trial court and the ld. trial Judge is further directed to decide the review application keeping in view the settled legal position, and for this purpose, I award a cost of Rs. 1,000/= to be paid by the petitioner to the respondents No. 1 and 2.

7. Accordingly, this CRA is allowed and the ld. trial Judge is directed to decide the review application filed by the present petitioner on its merits and after hearing both the parties. With these observations, the present CRA is allowed. Rule is made absolute to the above extent. The ld. trial Judge shall hear the review application on deposit of Rs. 1,000/= by the petitioner before his court and if this amount is deposited, the respondents No.1 and 2 are permitted to withdraw the said amount.

rmr. [K.A. Puj, J.]