

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 356 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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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?

PANKAJKUMAR BACHUBHAI VELANI

Versus

PATAN NAGARIK SAHKARI BANK LTD.

Appearance:

1. Civil Revision Application No. 356 of 2003
MR DHARMESH V SHAH for Petitioner No. 1
MR PK JANI for Respondent No. 1,3
MR GAURANG H BHATT for Respondent No. 2
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CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 30/01/2004

ORAL JUDGEMENT

Rule. With the consent of the parties matter is
heard today. This revision is filed against the

judgement and order dated 16-10-2003 passed by the learned Assistant Judge, Patan, in Civil Misc.Application No.39/2003.

2) The petitioner herein had preferred an Appeal from Order before the District Court at Patan against the order of the trial Court, passed below Exh.5, in Special Civil Suit No.6/2003. Since Exh.5 was rejected, the petitioner herein preferred an Appeal from Order under Order 43 of C.P.C. before the District Court, Patan. However, there was a delay of about five days in filing such appeal and, therefore, a separate application, being Misc.Civil Application No.39/2003, was preferred before the appellate Judge for condonation of delay. The appellate Court came to the conclusion that the ground mentioned for condonation of delay is not proper and the only ground given was that the applicant was out of station and was in Delhi for the period between 24th August 2003, and 27th August 2003. The said order is challenged before this Court.

3) Learned advocate for the petitioner has argued that in view of the decision of this Court as well as of the Supreme Court reported in AIR 1987 SC page 1353, the Court should adopt a liberal approach in condonation of delay. When there was a delay of five days only, the Court should have taken a liberal view and instead of rejecting the misc.civil application, should have disposed of the main appeal on its own merits.

4) In view of above decisions, this Civil Revision Application is allowed. Delay of about five days in preferring Misc.Civil Application No.39/2003 is condoned. Misc.Civil Application No.39/2003 preferred by the petitioner herein is allowed. The effect of this order would be that, now the District Court shall proceed with the matter on its own merits and in accordance with law. However, the petitioner is directed to pay cost of Rs.1,500/- to each of the respondents. Cost should be deposited in the trial Court, on or before 1st March, 2004. The respondents No.1 to 3 are permitted to withdraw such amount unconditionally. It is clarified that this Court has not stayed any proceedings for the execution of the order of Board of Nominee. It is clarified that this Court has not granted any stay against the award of the Lavad Court and this application is decided only in connection with condonation of delay and no other points are adjudicated. It will be open for the parties to request the District Judge to expedite the hearing of the Appeal.

5) Accordingly, this Civil Revision Application is allowed. Rule is made absolute with no order as to costs.

(P.B.Majmudar,J.)

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