

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CIVIL REVISION APPLICATION No. 1215 of 1990****For Approval and Signature:****HON'BLE MISS JUSTICE R.M.DOSHIT**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?
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CHIMANBHAI K MACHHI - Petitioner(s)**Versus****SHARDABEN G NIKHADE & 1 - Respondent(s)****Appearance :**

Petitioner SERVED.

Respondent No(s).: 1,2 UNSERVED.

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT**Date : 28/07/2005****ORAL JUDGMENT**

Feeling aggrieved by the order dated 4th July, 1986 made by the learned Assistant Judge, Vadodara in Civil Misc. Application No.168/1984, the applicant (defendant in Rent Suit No.236/1980) has preferred the present Revision Application under Section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as, "**the Rent Act**").

The petitioner was a tenant in the suit room bearing Municipal Census No.2001/257/101 situated at Vadodara for a monthly rent of Rs.5=00. The respondents-landlords instituted Rent Suit No.236/1980 in the Court of Small Causes, Vadodara for recovery of possession of the suit room on the ground that the plaintiffs required the suit room reasonably and bonafide for their personal use. The suit was contested by the defendant vide written statement (Exh.10). According to the defendant the plaintiffs had become owner of the suit room after 1st January, 1964 and were debarred from claiming possession of the suit room on the ground of reasonable and bonafide requirement. In view of the said contest the learned trial Judge framed an issue, inter alia, whether the plaintiffs had acquired interest in the suit room prior to 1st January, 1964 or since beginning of the tenancy and whether the plaintiffs were the landlords for the purpose of Section 13(1)(g) of the Rent Act. The said issue was ordered to be heard as preliminary issue. At the time of recording of evidence and hearing on preliminary issue neither the defendant nor his advocate appeared before the Court. The evidence of the plaintiff remained uncontroverted. The plaintiff produced a certified copy

of the partition deed dated 12th February, 1960 (Exh.18) to prove that the plaintiffs had become owner of the suit room under the said partition deed (Exh.18). In view of the evidence on record, by order dated 9th January, 1984, the said issue was decided in favour of the plaintiffs. Since the decision on the preliminary issue the suit was adjourned for recording evidence on other issues. At the time of recording of evidence on other issues also neither the defendant nor his advocate remained present. On the basis of evidence on record the learned trial Judge, by judgment and order dated 10th February, 1984, allowed the suit and passed decree for eviction against the defendant.

Feeling aggrieved, the defendant preferred Appeal in the Court of learned District Judge, Vadodara. The said Appeal was delayed by some seven months. The defendant, therefore, filed Misc. Civil Application No.168/1984 under Section 5 of the Limitation Act for condonation of delay and for extension of the period of limitation. According to the defendant at the relevant time his advocate had gone abroad and the defendant was unaware of the hearing of the suit. The defendant was not aware of the decision in the suit until summons dated 8th August,

1984 in Execution Application No.115/1984 was served upon him. He had, therefore, applied for the certified copy of the judgment and decree. The same were received on 15th August, 1984. As he was suffering from typhoid from 15th August, 1984 to 17th October, 1984 he could not prefer the Appeal within the period of limitation. The said Application was contested by the plaintiffs. The learned Assistant Judge, by impugned order dated 4th July, 1986, held that the defendant was negligent in attending the suit. In a suit instituted in the year 1980 the issues were framed on 21st July, 1982. The evidence on the preliminary issue was recorded on 9th January, 1984. After the decision on preliminary issue the further evidence was recorded on 3rd February, 1984 and the suit was decided on 10th February, 1984. The defendant did not remain present either on the date of recording of evidence on the preliminary issue nor on the date of recording of evidence on other issues. Even after the receipt of the certified copy of the judgment and decree the defendant did not prefer the appeal immediately. The defendant failed to prove that he was sick or unwell for the period from 15th August, 1984 to 17th October, 1984 as averred. The learned Assistant Judge, therefore, held that the defendant had failed to show sufficient cause

for condonation of the delay. The said application was, therefore, rejected. Therefore, the present Revision Application.

Whether or not to condone the delay is a matter of discretion of the concerned Court. In view of the above facts if the Court below was of the opinion that the defendant had failed to make out sufficient cause and had exercised discretion against the defendant, this Court shall not interfere with the order made by the Court below, in exercise of its revisional jurisdiction.

In view of the above discussion, the Revision Application is dismissed. Rule is discharged. The parties shall bear their own cost.

(Ms. R.M.Doshit, J.)

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