



Received on	:			
Registered on	:			
Decided on	:			
Duration	Years	Months	Days	

IN THE COURT OF DHARMENDER SINGH 4th ADDL. DISTRICT & SESSIONS JUDGE KHEDA AT NADIAD

C.M.A. No. 1 Of 2019

Exh:- ____

Appellant:

- 1. Varshaben D/o Kalusinh Kakwana & W/o Vijaysinh Pratapsinh Solanki**

Age: 33 years, Occupation: Household

Residing at: Rakhiyal, Tal: Dehgam,
Gandhinagar

Versus

Respondent:-

- 1. Vijaysinh Pratapsinh Solanki**

Age: 36 years, Occupation: Farming

Residing at: Betwada, Tal: Kapadwanj,
District: Kheda

Appearance :-

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*Ld. Advocate(s) **Mr. K.B. Zala** for Appellant.*

*Ld. Advocate(s) **Mr. R.N. Mahida** for Respondent.*

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Application under Section 5 of The Limitation
Act in Regular Civil Appeal under Section 96 of
The Code of Civil Procedure, 1908

~:: J U D G M E N T ::~

1. This application under section 5 of Limitation Act has been filed for condonation of delay for preferring an appeal under section 96 of the CPC against the judgment and decree dated 19.11.2018 in H.M.P. No. 25 of 2017 (Old No. 196 of 2015), which was passed by the Ld. Principal Civil Judge, Kapadwanj (hereinafter referred to as "trial court" in short).
2. Notice of this application has been issued to the opponent.
3. I have heard learned counsel on both sides and gone through the case file very carefully.
4. The judgment was delivered on 19.11.2018 whereas, the present appeal has been preferred on 01.01.2019, roughly after a delay of twelve days. It was argued by the Ld. counsel for the applicant that

the delay is not intentional but only because of unavoidable circumstances. On the other hand Ld counsel for the opponent argued that there is no sufficient cause mentioned in this application and prayed for dismissal of this application along with appeal on the point of delay.

5. After hearing the argument and going through the papers, this court is of the considered view the facts mentioned in this application do constitute sufficient cause in favour of the applicant. Moreover, a matter should be decided on merits rather than on technicality. Further, law of limitation is a branch of law of procedure and procedural law is a hand maid of justice and not to obstruct justice.
6. Keeping in view, this court is of the considered view that the present application has merit and deserves to be allowed. Therefore, this court passes the following order:

~ :: ORDER :: ~

1. Thus the application for condonation of delay in filing the appeal is hereby allowed.
2. The Registry is hereby directed to assign number to this appeal, as per law and be listed on board.

3. File be consigned in the record room, as per rule.
4. Copy of this order be sent to the Registry for necessary action. Order accordingly.

Pronounced in the open Court today on 02nd February, 2019.

Date: 02/ 02/ 2019

Place: Nadiad

(**Dharmender Singh**)

Code No. GJ01513

4th Addl. District & Sessions Judge
Kheda at Nadiad.

Archana