

Mehtabsab Vs. Yusuf and Another

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Court : Karnataka Gulbarga

Decided On : Feb-17-2014

Judge : Mohan M. Shantanagoudar

Appeal No. : Writ Petition No.85704 of 2012 & Writ Petition No. 101593 of 2013 (GM-AC)

Appellant : Mehtabsab

Respondent : Yusuf and Another

Judgement :

(Prayer: These Writ Petitions Are Filed Under Articles 226 and 227 of the Constitution of India Praying To Issue Order Or Writ In The Nature Of Certiorari Quashing Order Dated 23.06.2008 Vide Annexure-D Passed In Misc.Application No.55/2005 By The 1st Addl. Civil Judge (Sr. Dn.) Bijapur And Which Is Confirmed In Ma No. 17/2008 By The Learned li Addl. District Judge, Bijapur And Consequently Condone The Deiaiy In Filing An Application By Setting Aside The Exparte Award Dated 13.09.2002 In Mvc No.985/1995.)

1. The Second Additional District Judge, Bijapur, has refused to condone the delay in filing Miscellaneous Appeal No. 17/2008.
2. The records reveal that MVC No.985/ 1995 was disposed of on 13.09.2002 by MACT-VI, Bijapur.

Petitioner herein filed application for setting aside the exparte award dated 13.09.2002 in Miscellaneous Application No.55/2005 under Order - IX Rule 13 CPC. The same came to be dismissed by the First Additional Civil Judge, Senior Division, Bijapur, on 23.06.2008. The order passed in Miscellaneous Application No.55/2005 was assailed by the petitioner before the Second Additional District Judge, Bijapur, in Miscellaneous Appeal No. 17/2008 with the delay of 44 days. The First Additional District Court refused to condone the delay of 44 days by the impugned order.

3. Since the valuable rights of the parties are involved in the appeal, the proper course to be adopted by the District Court was to hear the appeal on merits and thereafter pass orders, which means, the delay ought to have been condoned by the District Court.

Be that as it may, since this Court is of the opinion that the delay of 44 days ought to have been condoned by the District Court, this writ petitions are allowed. The order dated 21.06.2012 passed by the Second Additional District Court, Bijapur, in Miscellaneous Appeal No. 17/2008 stands quashed. Miscellaneous Appeal No. 17/2008 revives before the Second Additional District Court, Bijapur.

All other questions except the question of delay are kept open to be urged before the Second Additional District Court, Bijapur, in Miscellaneous Appeal No. 17/2008.

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