

**Court No.3.**

**HIGH COURT OF SIKKIM**  
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**FAO No.04 of 2018**

UNITED SPIRITS LTD.

.... APPELLANT

VERSUS

M/S MOUNT DISTILLERIES LTD.

.... RESPONDENT

Date:03.11.2020

CORAM

**HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, J.**

For Appellant : Mr. Sarathi Dasgupta, Advocate.  
Ms. Sedenla Bhutia, Advocate.

For Respondent : Mr. Sudesh Joshi, Advocate.

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Today is the date fixed for hearing of the appeal which was admitted on 07.12.2018.

On 10.08.2020 when the case was ripe for final hearing it seems that Mr. Sudesh Joshi, learned counsel for the respondent pointed out that the appeal is barred by time and in absence of any application for condonation of delay filed along with the appeal, the appeal deserves to be dismissed as time-barred.

The learned counsel appearing for the appellant on that day prayed for some time to ascertain the factual position which was allowed by this court.

The matter was listed for hearing thereafter, on two subsequent dates i.e. 01.09.2020 and 15.10.2020 on which dates the learned counsel for the appellant sought time on

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the ground of pre-engagement of the learned arguing counsel and then on his personal ground which were also allowed.

Today Mr. Sarathi Dasgupta, learned counsel along with Ms. Sedenla Bhutia, learned counsel appears on behalf of the appellant. Mr. Sudesh Joshi, learned counsel appears on behalf of the respondent.

Mr. Sarathi Dasgupta fairly admits that what was pointed out by Mr. Joshi on 10.08.2020 that the appeal was preferred after the period of limitation was over was correct. He submits that he desires to file an application for its condonation. Mr. Sudesh Joshi vehemently objects to the same. He submits that as the appeal which was admitted for hearing was not accompanied by an application for condonation of delay nor had the appellant made any averment in the memo of appeal, the appellant is precluded from doing so now. A curious situation arises before this court in the circumstances stated above. Normally, an appeal would not be admitted for hearing before deciding on the issue of limitation. However, it seems that on 01.12.2018 the registry in its note stated that the appeal has been filed within the period of limitation.

In the circumstances, this court is of the view, that it is vital to decide the issue before hearing the appeal on merits. For the said purpose the appellant is permitted to file an application within a period of one week from today. All objections including the objection taken by Mr. Sudesh Joshi

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on 10.08.2020 and today may be taken by the respondent in a reply which may be filed within one week thereafter. Permission to file the application may not be construed as condoning the delay for doing so.

List the matter on 02.12.2020.

**Judge**

to/ **Index: yes/No**  
**Internet: yes/No**