

IN THE HIGH COURT OF BOMBAY AT GOA
MISC.CIVIL APPLICATION NO. 220 OF 2015.
IN
STAMP NUMBER(APPLN) NO. 393 OF 2015.

The Managing Director,
Goa State Infrastructure Development
Corporation Limited, EdC House,
7th Floor, Panaji, Goa.

....Applicant.

Versus

Mr. Satish Shirodkar.
Major of age, Married,
Indian National,
R/o Ella, Old Goa, Tiswadi, Goa.

.....Respondent.

Mr. S. S. Rebello, Additional Government Advocate for the applicant.

Mr. S. Shet, Advocate for the respondent.

Coram:- K. L. Wadane, J.
Reserved on: 26th June, 2015.
Pronounced on: 2nd July, 2015.

ORDER

Heard Mr. S. S. Rebello, learned Additional Government Advocate appearing for the applicant and Mr. S. Shet, learned Advocate appearing for the respondent.

2. The present application is filed by the applicant/original appellant for condonation of delay of 310 days caused for filing an

application for restoration of the First Appeal.

3. The applicant/original appellant filed First Appeal on 06.01.2014 challenging the order of the Ad-hoc District Judge, I, Panaji dated 25.9.2013 in a reference by which the learned Judge has enhanced the compensation from Rs.125/- per square metre to Rs.1252/-per square metre. After filing of the appeal the registry of this Court raised certain objections in the First Appeal. The applicant could not clear office objections raised by the registry and ,as such, First Appeal along with the application for stay was dismissed on 9.5.2014.

4. I have duly considered the arguments of the learned counsel appearing for the respective parties and with their assistance, I have gone through the record.

5. According to the applicant, the applicant was unaware of the dismissal of the appeal for default. The applicant came to know this only upon receipt of the application in the execution proceedings filed by the respondent in the reference Court. Then the applicant inquired of the First Appeal with the concerned Advocate and immediately filed this application for restoration of First Appeal, for which delay of 310 days is caused. The learned Advocate appearing for the applicant has argued that there was no negligence on the part

of the applicant because appeal was dismissed in default behind the back of the applicant. The applicant was unaware of the fact of dismissal. Therefore, the learned Additional Government Advocate appearing for the applicant has relied upon observations in the following judgments:-

i. *Bharat@ Krishna Dhirubhai Vyas Vs. State of Gujarat in Criminal Misc. Application No.9596 of 2012,*

ii. *Nazirkhan Bhurekhan Kayamkhani Vs. Municipal Commissioner in Civil Application No. 1537 of 2011 in Misc. Civil Application No.446/2011 in Stamp Number (SPL.C.A.) No. 14279 of 2009.*

6. As against this Mr. S. Shet, learned counsel appearing for the respondent has argued that the delay caused for filing the appeal is not all explained. Therefore, he has relied upon the observation in the case of ***State of Uttar Pradesh Vs. Amar Nath Yadav, (2014) 2 SCC 422***. In paragraph 2 there is reference of ruling reported in case of ***Postmaster General Vs Living Media India Ltd, SCC page 7573/74*** paras 27-30. Para 28 reads thus:--

“Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fides, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, Department cannot take

advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody, including the Government.”

7. By referring to the above observation of the Apex Court, the learned Advocate Shet has prayed to dismiss the application.

8. From the facts and observations of the above cited authority it is seen that there was delay in filing the appeal itself by the Government. Herein in the present case, the applicant has presented the appeal within time. However, it was dismissed for non-removal of the office objections. Obviously, the applicant was unaware of the fact of dismissal of the appeal. Therefore, in the interest of justice, delay caused for filing an appeal is liable to be condoned. Accordingly, it is condoned.

9. Application stands disposed of.

K. L. WADANE, J.

VN*