

IN THE HIGH COURT OF BOMBAY AT GOA
MISC. CIVIL APPLICATION NO. 454 OF 2015
IN
STAMP NUMBER MAIN NO. 1584 OF 2015

Smt. Bharti Pednekar & Anr. ... Applicants

V e r s u s

The Administrator of Comunidade,
South Goa & 3 Ors. ... Respondents

Mr. J. A. Lobo, Advocate for the applicants.

Mr. Z. D'Souza, Advocate for the respondents.

CORAM : K. L. WADANE, J

Reserved on : 7th December, 2015

Pronounced on : 9th December, 2015

ORDER :

The present application is filed by the applicants for condonation of delay caused for filing Second Appeal against the judgment and decree passed by the learned District Judge, Margao in Regular Civil Appeal No. 92/2011.

2. The grounds for condonation of delay are stated to be as follows :

That the applicants after receipt of the certified copy of the judgment and decree from the First Appellate Court applied for the Legal Aid from the Goa State Legal Services Authority. The Advocate appointed for the applicants was very busy and could not meet them

despite the best efforts. Therefore, the applicants have approached again to the State Legal Services Authority for appointment of another Advocate. On the request of the applicants, another Advocate was appointed who instructed them to bring the file of the said matter from the office of the Advocate of the Trial Court and also instructed to bring the certified copy of the judgment and decree from the Trial Court. The applicants obtained such certified copy immediately but Advocate appearing for them took time to find out the file as some papers were missing from the file. Therefore, the applicants approached their Advocate in the Trial Court to look for the same in his office. The applicants diligently approached the Advocate immediately. On having found the copies for the purpose of filing the Second Appeal before this Court, the applicants on consulting with the Advocate had to apply for other certified copies and there was delay in obtaining those copies. The applicants state that the delay in filing Second Appeal is bonafide and the same shall be condoned in the interest of justice.

3. The application is opposed by the respondent nos. 3 and 4 by filing their affidavit in reply.

4. I have heard the arguments of Mr. J. A. Lobo, learned counsel appearing for the applicants and Mr. Z. D'Souza, learned counsel appearing for respondent nos. 3 and 4. During the course of the arguments, Mr. Lobo, learned counsel has argued that the delay is caused for filing an appeal due to the mistake of the Advocate who was

appointed earlier and some time was required to collect the necessary documents for preparation of the appeal memo and its presentation along with the certified copies. So the delay is caused due to the fault of the Advocate who was earlier representing the applicants.

5. As against this, Mr. D'Souza, learned counsel appearing for the respondent nos. 3 and 4 has argued that the delay caused for filing Second Appeal has not at all explained and there was total negligence on the part of the applicants. He further argued that there are no particulars mentioned in the application as to when the applicants had applied for the certified copy and when they received it. There is no particulars on record about the specific reasons and the period of delay. According to Mr. D'Souza, the grounds stated in the application are absolutely vague. He further argued that there was delay of two years and two days and not six months. Therefore, there is no pleadings and explanation to condone the delay of two years and two days.

6. With the help of the learned counsel appearing for both the parties, I have gone through the contents of the application, affidavit and the concerned records. On perusal of the same, it appears that the application for condonation of delay i.e., the present application along with the appeal memo was signed and verified on 14.10.2013. The appeal memo was presented along with the necessary certified copy that means the appeal memo along with certified copies were ready before 14.10.2013 and the present application and the appeal memo

was presented on 14.10.2013. It is material to note that the present application and the appeal memo was presented before this Court only on 08.05.2015 and the same is clear from the note of the concerned Section Officer of the Judicial Section and inspite of the fact that the application as well as the appeal memo were ready for filing before 14.10.2013, it was not presented on 14.10.2013 and it came to be presented only on 08.05.2015. So obviously, there is no explanation for not submitting the application for condonation of delay along with appeal memo on 14.10.2013. One can understand the delay caused for filing the application before its preparation and presentation along with the certified copy. But there is no explanation as to why the application and the appeal memo was not presented on 14.10.2013 and how the Court can condone such unexplained delay. I am aware that while dealing with such application for condonation of delay a hyper technical approach should not be adopted by the Court as well as the length of the delay does not matter provided it is properly explained. In the present case, the delay from 14.10.2013 up to 07.05.2015 has not at all been explained. In such circumstances, I do not think that there are reasonable grounds to condone the delay. Hence, the application for condonation of delay stands rejected.

K. L. WADANE, J

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