

IN THE HIGH COURT OF BOMBAY AT GOA.

Criminal Writ Petition No.83 of 2015

Mr. Franco Berne Martins

..Petitioner

Versus

Mrs. Archana Pai Kudchadkar & anr.

Respondents

....

Mr. Nitin Sardessai, Sr. Advocate with Mr. L. Raghunandan, Advocate for the appellant.
Mr. Menino Teles, Advocate for respondent no.1.

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CORAM : K.L. WADANE, J.

Order reserved on : 22/9/2015

Order pronounced on : 30/09/2015.

ORDER :

Heard Shri Mr. Nitin Sardessai, learned Senior Advocate with Mr. L. Raghunandan, learned Advocate appearing for the appellant and Mr. Menino Teles, learned Advocate appearing for the respondent no.1.

2] This petition is filed by the petitioner seeking to challenge the order passed by the Judicial Magistrate First Class, Margao-Goa by which the application for condonation of delay has been dismissed, against which, the petitioner preferred criminal revision application before the Additional Sessions Judge, South Goa, who has also dismissed the

revision. Hence, the present writ petition is filed.

3] The brief facts of the case may be stated as follows:-

The petitioner i.e. original complainant filed Criminal Misc. Application No.660/2013/F against the respondent no.1 for the offence punishable under Section 138 of the Negotiable Instruments Act, contending therein that the respondent no.1 had in discharge of a part of legal dues/debt issued the cheque for an amount of Rs. 20,00,000/- in favour of the petitioner. The petitioner deposited the said cheque in the bank. The respondent no.1-Bank ICICI, vide its memo informed the Corporation bank that the said cheque has been returned unpaid on account of remarks, "funds insufficient".

4] On 15/04/2013, the petitioner issued demand notice to the respondent no.1. It was received by him on 16/4/2013. The respondent no.1 thereafter time and again assured the petitioner that the said cheque amount would be paid as the respondent no.1 was to get huge sum of money from one deal and therefore, he requested the petitioner not

to file criminal case so as to avoid the respondent no.1 from embarrassment of criminal liability.

5] The petitioner solely based upon the assurances and friendly relationship with the respondent no.1 in bonafide belief did not file complaint under Section 138 of the Negotiable Instruments Act.

6] On 23.9.2013 the petitioner made a phone-call to the respondent no.1 but it was not answered and as such the petitioner apprehended that the respondent no.1 had no intention to make the payment. Therefore, the petitioner had filed a complaint along with the application for condonation of delay of one hundred and seventeen days.

7] The learned Judicial Magistrate, First Class, after hearing both sides was pleased to dismiss the application. The petitioner, being aggrieved by the order dated 23.12.2013 passed by the Judicial Magistrate First class preferred Criminal Revision Application No.10/2014 which was also dismissed. Hence, the present petition is filed.

8] The petitioner has contended that due to assurances given of the respondent no.1 and due to friendly relations, he did not file a complaint within the prescribed period of limitation. The delay was caused due to oral assurances given by the respondent no.1. The delay is sought to be condoned on the above sole ground.

9] I have heard the arguments of Mr. Sardessai, the learned Senior Advocate, appearing for the petitioner and Mr. Teles, the learned Advocate appearing for the respondent no.1.

10] It is well settled principle of law is that the Court should adopt a liberal approach while deciding the application for condonation of delay. While dealing with such application, the Court shall not take hyper technical view. At the same time, it is also well settled principle of law is that the delay has to be explained properly irrespective of its length. If the delay is properly explained then it could be condoned, irrespective of the length of delay. Keeping in mind the aforesaid settled principles of law and on the scrutiny of record, it reveals that the present petitioner had

issued three cheques in favour of the respondent no.1 and before filing the present complaint, the petitioner has filed two criminal complaints under Section 138 of the Negotiable Instruments Act after dishonouring of two cheques and the present matter is regarding third cheque issued by the petitioner.

11] Looking to the contents of the application for condonation of delay, no particulars are given by the petitioner as to when (date, time and place) the respondent no.1 assured the petitioner, before whom he had assured, the grounds set out in the petition for condonation of delay appears to be vague. Further more, the applicant has not explained as to why such assurance is not taken in writing from the respondent no.1 particularly on the background that the petitioner had already taken steps to issue notice to the respondent no.1 for demand of amount under cheque. The petitioner has filed earlier two complaints bearing Nos. 132/2013 and 133/2013 on 22nd July 2013 and the present complaint was filed on 26th September, 2013. The very fact that the complainant had filed the complaint against the respondent no.1 on earlier two occasions prior to filing of

present two complaints goes to show that the allegations to that effect that the accused assured the complainant that she would make the payment towards the cheque appears to be false. If at all, the respondent no.1 assured such payment and complaint believed on such assurance, then why the petitioner had earlier filed two complaints against the respondent no.1.

12] I have gone through the reasons recorded by the learned Judicial Magistrate First Class as well as the Additional Sessions Judge, from which, it appears that the application for condonation of delay has been rightly dismissed by the Judicial Magistrate First Class and the same order is upheld by the Additional Sessions Judge. Therefore, I do not think to interfere with the findings recorded by the Courts below. Consequently, the present writ petition is dismissed with no order as to costs.

K.L.WADANE, J

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