

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.600 OF 2015**

Shri Abdul Sattar Kulli,
Major, r/o. Muzawar Wada,
Near Petrol Pump,
Sanquelim, Goa.

.... Petitioner

V/s

Smt. Aisham Bi Mamlekar
(since deceased) represented by her
legal representatives

- a) Mr. Shaikh Issuf Adam Mamlekar,
S/o. late Adam Mamlekar,
Aged 50 years, service.
- b) Mrs. Dilshakbee Issuf Mamlekar
w/o. Shaik Issuf Mamlekar
Aged 41 years, housewife,
Both r/o. H.No.2002, Vasant Nagar,
Sankhali, Goa.
- c) Mr. Shaikh Abdulla Adam
Mamlekar,
Son of Shaikh Adam Mamlekar,
Aged 44 years, service.
- d) Mrs. Ramiza Bi Shaikh alias Mrs.
Ramiza Bi Shaikh Abdulla
Mamlekar
w/o. Shaikh Abdulla Mamlekar,
major,
Both r/o.2470, Desai Nagar,
Sankhali, Bicholim, Goa.
- e) Mr. Abdul Sattar Adam Mamlekar,
Son of Shaikh Adam Mamlekar,

Aged 45 years, unmarried,
r/o. H.No.859, Muzawarwada,
Sankhali, Goa.

- f) Mrs. Dilshad Bi Mulla alias Dilshad Bi Mamlekar,
d/o. Shaikh Adam Mamlekar,
w/o. Mr. M. Aftabodin Mulla,
Aged 44 years, housewife.
- g) Mr. M. Aftabodin Hassan Mulla,
Son of Hassan Mulla,
Aged 49 years, business,
Both r/o. H.No.277/4, Safa Masjid
Shapur, Bandora, Ponda-Goa.
- h) Mrs. Shamimbi Rahimkhan Pathan
alias Najbunbi Adam Mamlekar,
d/o. Shaikh Adam Mamlekar,
w/o.Mr. Rahimkhan Pathan,
Aged 52 years, housewife.
- i) Mr. Rahimkhan Gafur Pathan,
s/o. Mr. Gafur Khan Pathan,
Aged 52 years, service,
Both r/o. H.No.299/1, Karapur Tisk,
Bicholim-Goa.
- j) Mrs. Yasmeen Yacub Mamlekar,
w/o. Yacub Mamlekar,
Aged 42 years, housewife
- k) Mr. Shaik Yakub Adam Mamlekar
s/o. late Shaikh Adam Mamlekar,
Aged 56 years, business,
Both r/o. H.No.859,
Muzarwarwada, Nr. Petrol Pump,
Sankhali, Goa.
(respondent nos.(a) to (k)
represented by their duly constituted
attorney, respondent no.k.

.... Respondents

Mr. R. G. Ramani, Advocate for the Petitioner.
Ms. A. Agni, Advocate for the Respondents.

CORAM : C.V. BHADANG, J.

DATE : 8th SEPTEMBER, 2015

ORAL JUDGMENT :

Rule. Rule made returnable forthwith. Ms. A. Agni, learned Counsel waives service for the respondents. Heard finally by consent.

2. The petitioner is the tenant of the respondents. The respondents had filed eviction proceedings against the petitioner before the Rent Controller. By an order dated 29/09/1997, the Rent Controller had allowed the application directing eviction of the petitioner. This was challenged by the petitioner before the Administrative Tribunal. It is undisputed that by virtue of amendment to the Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968 which came into force on 24/05/2013 the jurisdiction to hear the appeals from the order of Rent Controller was transferred to the District Court. According to the petitioner the files were not physically transferred to the District Court for quite sometime. In the meantime, the respondent- Smt.Aisham Bi expired on 16/07/2014. Eventually, on 20/10/2015, the files were transferred to the District Court. The District Court issued notice to the parties. The petitioner received the notice on 2/02/2015. The appeal was

fixed for 4/02/2015. On that day, the petitioner appeared along with his Counsel and sought time to bring the legal representatives of the present respondent on record. It appears that time was granted till 16/02/2015. However, the petitioner filed an application for bringing legal representatives on 06/02/2015 itself. That was accompanied by an application for condonation of delay. The learned District Judge by the impugned orders dated 12/06/2015 has refused to condone the delay of 140 days on the ground that the petitioner has not shown due diligence in filing application. Consequently, the application for bringing legal representatives was also rejected. In pursuance thereof the appeal was dismissed as abated. These three orders dated 12/06/2015 are subject matter of challenge in this petition. That is how the petitioner is before this Court.

3. It is submitted by Mr. R.G. Ramani, learned Counsel for the petitioner that for want of the files being transferred, the petitioner could not take steps for filing the application for bringing the legal representatives on record. It is submitted that the respondent died after the jurisdiction was transferred by virtue of the amendment. Thus, the application could not have been filed before the Administrative Tribunal. It is submitted that after notice was issued from the District Court on 2/02/2015, the application is filed within a period of 4 days and thus the

delay deserves to be condoned.

4. Ms. A. Agni, the learned Counsel for the respondent submits that the petition would not be maintainable. Reliance is placed on the decision of the Hon'ble Supreme Court in the case of ***Radhey Shyam & Anr. v/s Chhabi Nath & Ors.*** reported in ***(2009) 5 SCC 616*** and ***Sneha Gupta V/s. Devi Sarup & Ors.*** reported in ***(2009) 6 SCC 194*** in order to submit that the powers of superintendence available to this Court under Article 227 of the Constitution have to be sparingly exercised to keep Tribunals and Courts within the bounds of their authority. Such orders can be examined only in very exceptional cases when manifest miscarriage of justice has been occasioned. Such power, however, is not to be exercised to correct a mistake of fact and of law.

5. In so far as the merits are concerned, it is submitted that the record would show that the petitioner was aware of the death of the respondent from August 2014 and as such, should have taken steps to file the application with expedition. The learned Counsel has also pointed out the contents of para 19 of the petition in order to submit that even according to the petitioner the earlier notice issued by the District Court was served on advocate Mr. Malik, who was appearing for the petitioner in which the appeal was fixed for appearance on 16/12/2014.

It is further submitted that once notice was served on the Counsel there was no reason for the petitioner not to have filed the application earlier.

6. I have considered the rival circumstances and the submissions made. With the assistance of the learned Counsel for the parties, I have perused the impugned order and the copies of the roznama. It is undisputed that by virtue of the amendment to the Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968, the jurisdiction to hear the appeals stood transferred from the Administrative Tribunal to the District Court with effect from 24/05/2013. The respondent died on 16/07/2014. The copy of the roznama would show that the papers of the appeal were received in the District Court on 20/10/2015. It also shows that the notice was issued in which the date of appearance was fixed on 4/02/2015. The roznama would further show that time was sought and the appeal was fixed on 16/02/2015 and in the meantime on 6/02/2015, the application for bringing legal representatives along with an application for condonation of delay came to be filed. If that be so, it is difficult to accept that the petitioner has not acted with due expedition and diligence. The learned District Judge has relied upon the service of notice on the petitioner/appellant and the advocate. However, it is significant to note that the notice by which the date of appearance was indicated as 19/11/2014, was not personally served on the appellant, but

was served on the Advocate Mr. Malik. The petitioner has made out a case that the advocate had not informed about the same to him. The fact that the notice was served on the advocate cannot act to the detriment of the petitioner, particularly, in view of the contention that the concerned advocate did not inform the petitioner. It is trite that no party can be made to suffer for the lapse of the advocate. The record would show that after the receipt of the notice on 2/02/2015, the application is filed within 4 days on 6/02/2015. There cannot be any dispute with the proposition that the powers available under Article 227 of the Constitution of India have to be sparingly exercised in exceptional cases and when there is manifest miscarriage of justice. As noticed in the present case, the District Court has proceeded on the assumption that the earlier notice was also served on the petitioner. At the cost of repetition it needs to be stated that the only notice served on the petitioner personally was on 2/02/2015 and the application is filed within 4 days thereof. In that view of the matter, the impugned order would need interference, even with the constraints on the exercise of jurisdiction under Article 227 of the Constitution of India.

7. Thus, the petition is allowed. The impugned orders are hereby set aside. The application for condonation of delay and for bringing the legal representatives on record is hereby allowed as prayed. The

impugned order dismissing the appeal as abated is also set aside. The appeal is restored to the file of the District Judge at its original number for its disposal in accordance with law. The parties to appear before the District Court on 5/10/2015 at 10.00 a.m.

8. At this stage, the parties submit that the appeal before the District Court may be expedited. It is submitted that the original appeal filed before the Administrative Tribunal is of the year 1997. In the circumstances, the District Judge shall decide the appeal as expeditiously as possible and preferably within a period of 6 months.

9. Rule is made absolute in the aforesaid terms with no order as to costs.

C.V. BHADANG, J.

NH/-