

IN THE HIGH COURT OF BOMBAY AT GOA**MISC. CIVIL APPLICATION NO. 928 OF 2013**

Shri. John Joseph D'Souza,
58 years of age, Business,
Son of late Gerald D'Souza,
R/o. H.No.2/125A, Pequén Morod,
Saligaon, Bardez Goa

... **Applicant**

Versus

- 1] The Administrator of Comunidades,
North Goa, North Zone,
Comunidade Building, Near E1 Capital
Theatre, Mapusa – Goa.
- 2] The Attorney,
Comunidade of Mapusa,
Mapusa, Goa.
- 3] The Chief Secretary,
State of Goa,
Having office at Secretariat,
Porvorim, Goa.
- 4] Smt.Vasant Tamonkar,
Major, widow, Indian National
Resident of Oxel, Siolim,
Bardez Goa.

... **Respondents**

Mr. Ashwin Bhobe, Advocate for the applicant.
Mr. Vidhati Shetye h/for Mr. Valmiki Menezes, Advocate for the
respondent No.2.
Mr. Sandesh Padiyar, Advocate for the respondent No.4.

Coram : C. V. BHADANG, J.

Date : 10th July, 2015.

ORAL ORDER :

By this application the applicant / appellant, who is the
original plaintiff is seeking condonation of delay in filing a revision
application, challenging the order dated 25th August, 2011 passed by

the Registrar, by which the First Appeal No.59 of 2007 was dismissed, for want of deposit of paper book charges. There is a delay of 730 days in filing the revision application.

2] According to the applicant, the first appeal was filed on 13th March, 2007 and it was admitted on 26th April, 2007. It is submitted that the applicant was informed by the counsel, who then represented the applicant, that he would be intimated when the appeal is ripe for hearing and is listed before the Court. The applicant was bonafidely expecting that he would be informed and called when required and / or when the first appeal is listed for hearing. The applicant visited the office of his advocate in the last week of August-2013, to find out the status of the first appeal. He was informed by a junior attached to the office, who was handling the matter, that he would find out the status. Thereafter, on 26th August, 2013 the applicant was informed that the first appeal was dismissed under the order of the Registrar. On further enquiry, it was learnt that it was dismissed on account of non-payment of the paper book charges. It is stated that the applicant was not aware of the passing of the impugned order. He came to know about the same only on 26th August, 2013. The delay is not occasioned on account of any negligence of the applicant. The applicant was bonafide believing that the matter is

being looked after and the applicant would be intimated as and when the appeal is for hearing. It is therefore prayed that the delay deserves to be condoned.

3] The respondent No.4, who is the main contesting respondent, has filed reply opposing the prayer. It is contended that the applicant has not shown sufficient cause for condonation of delay. It is contended that the affidavit of the concerned junior advocate is not filed. It is contended that the applicant should have been diligent and should not have relied only on his advocate, in order to pursue the matter. It is thus contended that the dismissal of the first appeal has also the delay is a result of the applicant not acting diligently.

4] I have heard Mr. Bhobe, the learned counsel for the applicant, Mr. Padiyar, the learned counsel for the respondent No.4. and Ms. Vidhati Shety, the learned counsel for the respondent No.2

5] On hearing the learned counsel for the parties and on perusal of the application, I find that the application deserves to be granted.

6] On behalf of the respondent No.4 reliance is placed on the decision of the Hon'ble Supreme Court in the case of ***Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar***

reported in (2013) 12 SCC 649, in which the Hon'ble Apex Court has laid down the principles, which the Courts have to keep in mind while dealing with the prayer for condonation of delay. The learned counsel has submitted on the basis of Para.16(d) of the judgment in the case of *Esha Bhattacharjee* (supra) that there is an increasing tendency, which has been noticed by the Court to perceive delay as a non-serious matter, leading to a “cosequent lackadaisical propensity”.

7] In the matter of a prayer for condonation of delay, the Court has to look, whether sufficient cause has been made out or not. In this case, the sole ground is that the applicant was informed by the counsel that the matter was admitted and the applicant could be informed as and when needed or the appeal is ripe for hearing. It is true that the applicant could have acted more diligently. However, it appears that the applicant had himself approached the office sometime in August 2013, when he was informed that the status of the appeal would be ascertained and shall be intimated. Thereafter, on 26th August, 2013, the applicant was informed about the dismissal and shortly thereafter i.e. on 2nd September, 2013, the revision application along with an application for condonation of delay is filed. It is trite that no party stands to gain by approaching the Court late. Considering overall circumstances, I find that the delay may be

condoned subject to costs of Rs.5,000/-, to be paid to the respondent

No.4. In the result, the following order is passed :

- i) Application is allowed.
- ii) The delay in filing the revision application is hereby condoned subject to payment of costs of Rs.5,000/- to the respondent No.4.
- iii) Let the revision application be registered, on payment of costs.

C. V. BHADANG, J.

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