

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 76 OF 2015**

MS. CARLA ADELIADÉ LOURENÇO BORGES
DE SA REP. BY MR. MARIO RENATO
BORGES DE SA. ... Petitioner

Versus

SALGAOCAR MINIG INDUSTRIES PVT.
LTD., REP. BY SHRI ANIL V.
SALGAOCAR. ... Respondent

Mr. Manish D. Salkar, Advocate for the Petitioner.

Mr. Ashwin D. Bhobe, Advocate for the Respondent.

Coram:- M. S. SANKLECHA, J.

Date:- 24th March, 2015

ORAL ORDER :

This petition under Article 226 of the Constitution of India challenges order dated 12/08/2014 passed by the District Judge-4 at Margao. By the impugned order the respondent's application for condonation of delay of 14 months and 8 days in filing an appeal from the decree dated 26/04/2012 passed by Civil Judge, Junior Division, Margao was allowed.

2. Briefly the facts relevant to the present proceedings are that the petitioner is an owner of a flat given on licence to the respondent.

The petitioner filed a suit on 6/02/2012 before the Civil Judge, Junior Division, Margao seeking vacant possession of the flat along with compensation for occupation of the flat and damages. The respondent was unrepresented inspite of service of summons and the suit came to be decreed in favour of the petitioner on 12/04/2012. Thereafter, the above decree was sent to the respondent's office at Salgaoncar Chamber, Margao. However, according to the respondent they did not notice it assuming it was received and it was only thereafter when an execution application was filed by the petitioner and notice of the execution application was served on 11/12/2012 upon the respondent at its office at Salgaocar Chamber, Margao did they realise that a decree has been passed against them. The respondent thereafter participated in the execution proceedings. However it was only in July 2013 that the petitioner filed an appeal before the District Judge along with an application for condonation of delay of 14 months and 18 days in filing the appeal. By the impugned order dated 12/08/2014 the condonation application was allowed subject to payment of costs of Rs.20,000/- by the respondent to the petitioner.

3. The grievance of the petitioner is that there was a gross delay on the part of the respondent in filing an appeal and seeking condonation

of delay. This delay on the part of the respondent defeats valuable rights accrued in favour of the petitioner. Moreover it is contended that the respondent has filed the application for condonation of delay by not disclosing correct facts and on that account itself the application for condonation of delay ought to have been dismissed. In support of the above, attention is drawn to the fact that the impugned order records the submission of the respondent that one advocate Ms. Madhumita was instructed to file an appeal from the decree dated 26/04/2012 had resigned with effect from 8/04/2013, while the roznama itself indicates that the advocate Madhumita did appear for respondent in execution proceedings in April and December 2013. Besides, it is also pointed out that the respondent itself had filed proceedings in Court in the month of October 2012 indicating its office address as Salgaoncar Chamber, Margao, Goa. Thus it is submitted that on account of respondent not having come with clean hands the application for condonation of delay should not have been entertained.

4. The impugned order has proceeded on the basis that a valuable right accrued in the favour of the petitioner on account of lapse on the part of the respondent. However, it proceeds on the basis that if delay

is sufficiently explained the doors of the court must not be shut. Nevertheless taking into account the lapse on the part of the respondent the impugned order while condoning the delay imposed costs of Rs.20,000/- on the respondent. The two instances of not coming to Court with clean hands pointed out by the petitioner does not make the exercise of discretion in the impugned order bad. It is not the respondent's case that the decree dated 26/04/2012 was not received at Salgaoncar Chamber, Margao. The submission is that as their registered office had shifted the decree dated 26/04/2012 though possibly received it was not noticed. In fact according to the respondent they became aware of the decree when the execution notice was served on 11/12/2012 at its office at Salgaoncar Chamber, Margao. So far as advocate Madhumita appearing in April and December, 2014 for the respondent in Execution application is concerned it is entirely possible even if she has resigned from the employment of the respondent in April 2013 she could have subsequently been engaged as an independent Advocate. The impugned order while condoning the delay application for the purpose of exercising jurisdiction has taken into consideration the fact that the respondent had nothing to gain by deliberately delaying in filing of the appeal from the decree dated 26/04/2012. The

explanation offered by the respondent was that it was its Chairman Mr. Anil Salgaonkar who was the person who would take decision in these matters and in the month of December, 2012 and January, 2013 because of ill health he was not attending office which resulted in initial delay and thereafter although the Chairman did direct the law officers of the respondent to file an appeal, the same remained to be filed in view of the resignation tendered by the legal officer who was directed to file appeal. The impugned order after holding that there has been lapse on the part of the respondent goes on to hold that the explanation offered by the respondent for the delay was a plausible view thus warranting condonation of delay. However, taking into account the fact that there was a lapse on the part of the respondent a cost of Rs.20,000/- was awarded for the petitioner keeping in view the fact that the entire dispute could be decided on merits after hearing the parties. As observed by the Apex Court in *N. Balakrishnan V/s. M. Krishnamurthy* reported in (1998) 7 SCC 123 that;

“Once the Court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the Supreme Court should not disturb such finding, much less in revisional jurisdiction unless the exercise of discretion was wholly on untenable grounds, arbitrary or perverse.”

In the present facts, exercise of discretion by the Judge cannot be said to be on untenable grounds, arbitrary or perverse.

5. In view of the above, I see no reason to interfere with the impugned order dated 12/08/2014. Writ Petition dismissed. No order as to costs.

M. S. SANKLECHA, J.

NH/-