

IN THE HIGH COURT OF BOMBAY AT GOA

MISC.CIVIL APPLICATION NO. 12 OF 2015

IN

STAMP NUMBER MAIN NO. 3366 OF 2014

MR. FRANCISCO XAVIER DIAS AND ANR. ... Applicant
Versus
MRS. OLGA CABRAL AND 24 ORS. ... Respondent

Shri Siddesh Shet, Advocate for the Applicants.
Shri Prasheen Lotlikar, Advocate for the Respondent Nos. 2 and 3.

Coram:- C. V. BHADANG, J.

Date:- 8th July, 2015

P.C:

This is an application for condonation of delay of 432 days in preferring a second appeal.

2. The appellants/applicants, who were the original plaintiffs had filed a suit which was dismissed. The appeal filed by the applicants also came to be dismissed on 14.08.2013, thereby confirming the decree of the trial Court.

3. The record shows that the certified copy of the judgment and decree was applied on 03.04.2014 and the copy was ready on 05.04.2014 and it was delivered to the applicants on 25.04.2014. However, the appeal alongwith the application for condonation of delay came to be filed on or about 22.12.2014.

4. According to the applicants, the applicant no. 2 suffered some eye related problems, which was aggravated in July, 2013 and she was treated by an ophthalmologist from Mumbai. The applicants had gone to Mumbai on 25.07.2013. Thereafter, on 30.07.2013, applicant no. 2 was admitted at the Lotus Eye Hospital and both the applicants thus, continued to stay in Mumbai and after the treatment they returned back to Goa.

5. In the fourth week of March, 2014, the applicant no. 2 had to proceed to United Kingdom to take care of her daughter-in-law. After the applicant no. 2 returned back to India in the month of July, 2014, she was required to undergo CT scan at Apollo Hospital. Applicant no. 2 suffered a cardiac stroke and was also suffering from hypertension and other diseases.

6. Further, according to the applicants, when the applicant no. 1 visited the office of his Advocate on 02.04.2014, he came to know that the first appeal filed by him was dismissed and he was advised to prefer a second appeal. The Advocate for the applicants thereafter, applied for certified copy on 03.04.2014 and it was the applicant's Advocate, who collected the copy on 25.04.2014.

7. Further, according to the applicants, applicant no. 1 suffered from scalds over both the legs and had difficulty in travelling alone. In the

first week of May, 2014, the applicant no. 1 collected the certified copy from his Advocate, when he was advised to visit the office of the Advocate in the third week of June, 2014. Accordingly, when the applicant no. 1, visited the office of the Advocate, he was informed that the Advocate would prepare the brief. It was contended that due to pain, the applicant no. 1, could not visit his Advocate's office. He was admitted in Trimurti Hospital from 12.08.2014 to 14.08.2014. Thereafter, the applicant no. 1 was advised not to travel during monsoon. It was only in December, 2014 that the applicant no. 1 after knowing that his appeal was time barred, filed the appeal alongwith an application for condonation of delay.

8. It is contended that the applicants were prevented from circumstances beyond their control from filing the appeal, within time and as such, the delay deserves to be condoned.

9. Respondent nos. 2 and 3 have filed a reply opposing the prayer. All the rival contentions are denied. It is stated that no sufficient cause for condoning the delay is made out.

10. Heard the learned Counsel for the applicants and the learned Counsel for the respondent nos. 2 and 3. There is no appearance on behalf of the other respondents, though served.

11. The existence and establishment of a sufficient cause is the sine qua non for condonation of delay. It has to be shown that the party seeking condonation was prevented from circumstances or causes beyond control in preferring the appeal within time. The quantum of delay may not be strictly material. It has to be shown that the delay was not on account of negligence and/or lack of diligence. It is true that ordinarily Court would take a liberal view in the matter, as there is no presumption, that the delay is intentional and no party stands to gain by approaching the Court late. Normally, decisions on merits are to be preferred that on technicalities. These are the general principles, to be kept in mind while considering, the facts and circumstances in each case, in order to find out, whether a case for condoning the delay is made out or not.

12. Turning to the present case, there are two applicants, who are husband and wife. The record shows that after the impugned judgment and order dated 14.08.2013, passed by the learned Appellate Court, the certified copy itself was applied after a period of about eight months i.e. on 03.04.2014. The reasons shown by the applicants are medical grounds of the applicant no. 2 and not that of applicant no. 1. Even otherwise, the applicant no. 2 is stated to have proceeded to United Kingdom in the fourth week of March, 2014. The applicants claim that the applicant no. 2 was admitted at Lotus Eye Hospital on 30.07.2013 and after treatment both the applicants had returned to Goa. The date or month when the applicants so

returned, is conspicuously absent in the application. Further, according to the applicants, the applicant no. 2 had returned back to India, sometime in the month of July, 2014. The fact remains that the explanation for not filing the appeal, during this period, only pertains to medical ground of applicant no. 2 and there is no reason shown, much less plausible one, as what prevented the applicant no. 1, who was looking after the litigation, for not taking steps for filing the appeal.

13. The record shows that even after receipt of the certified copy on 25.04.2014, the appeal is filed eight months thereafter i.e. on 22.12.2014. During this period, the explanation is based on medical grounds of the applicant no. 1. On their own saying, the certified copy was collected by the applicant no. 1, sometime in the first week of May, 2014 and they were advised to visit the office of the Advocate in the third week of June, 2014. However, the applicant no. 1 had approached only in December, 2014. The reason shown was that the applicant no. 1 was advised not to travel in monsoon. However, there is no medical certificate to that effect filed.

14. I have given my anxious consideration to the rival circumstances and the submissions made and I find that the applicants have not acted with due diligence. Thus, the applicants have not made out sufficient cause for not filing the appeal within time.

15. In the result, no case for condoning the delay is made out. The application is dismissed, with no order as to costs.

C. V. BHADANG, J.

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