

IN THE HIGH COURT OF BOMBAY AT GOA**SECOND APPEAL NO. 33 OF 2016**

Comunidade of Savoi Verem
represented by its attorney,
Prabhakar Datta Chaphadkar,
Major of age, r/o. Ponda, Goa.

..... Appellants.

V/s.

1. Shripad S.S. Singbal,
resident of H.No.30/A,
Guirija Shankar, Davorlim,
Navelim, Salcete, Goa.

2. Mrs. Lalita S. S. Singbal,
resident of H.No.30/A,
Guirija Shankar, Davorlim,
Navelim, Salcete, Goa.

3. Maniklal S. S. Singbal,
resident of Indina Apartments,
near Samant's Shop,
Pandava Chapel,
Aquem, Margao, Salcete, Goa.

4. Mrs. Vassanti M.S. Singbal
resident of Indina Apartments,
near Samant's Shop,
Pandava Chapel,
Aquem, Margao, Salcete, Goa.

5. Govind S.S. Singbal,
near Dr. Ghanekar's Hospital,
Ponda, Goa.

6. Mrs. Vanita S.S. Singbal
near Dr. Ghanekar's Hospital,
Ponda, Goa.

..... Respondents.

Mr. A. F. Diniz, Advocate for the appellants.

Mr. A.D. Bhobe, Advocate for the respondents.

CORAM :- F.M. REIS, J.

Date : - 29 SEPTEMBER 2016.

ORAL JUDGMENT :-

Heard Mr. A. F. Diniz, learned Counsel appearing for the appellants and Mr. A. D. Bhobe, learned Counsel appearing for the respondents.

2. The above appeal came to be admitted by an order dated 12th August, 2016, on the following substantial questions of law :

- (i) Whether the Lower Appellate Court has applied the correct principles in refusing to condone delay of 84 days in filing of the First Appeal ?
- (ii) Whether the Lower Appellate Court by ignoring the resolution of the Managing Committee dated 29.12.2010 authorizing the filing of the appeal, has arrived at wrong conclusions ?
- (iii) Whether the Court was correct in holding that a consent decree between the respondent's family would

create a title in the respondent's favour to the suit property or as against third parties i.e. the appellant ?(iv) Whether in the absence of any pleading in the plaint or any proof that the suit property corresponded to old cadastral number 87, the Court could conclude that the suit property corresponded to the said old cadastral ?

(v) Whether the finding of the Court that the suit property bearing Land Registration Number 15757, corresponded with old cadastral number 87 or new survey number 12/1 is perverse ?

3. Mr. A.F. Diniz, learned Counsel appearing for the appellant has extensively taken me through the impugned Order passed by the learned Lower Appellate Court, whereby the application for condonation of delay of 84 days came to be dismissed. The learned Counsel points out that the learned Lower Appellate Court whilst dismissing the application for condonation of delay has erroneously taken a view that there is no material to establish sufficient cause to condone the delay. The learned Counsel further submits that though there are averments to justify the delay in preferring the appeal, the learned Lower Appellate Court has dismissed the application essentially on the ground that there was no corroborative evidence produced by the appellants to substantiate such

allegations. The learned Counsel further submits that it is now well settled that whilst examining an application for condonation of delay, a justice oriented approach has to be adopted by the Courts, but, on the contrary, the learned Judge whilst passing the impugned Order has failed to note that dismissing the application would deprive the appellant of a right of appeal to get the dispute adjudicated on merits. The learned Counsel, as such, points out that the learned Lower Appellate Court has misconstrued the allegations made in the application and, consequently, the impugned order passed by the learned Lower Appellate Court deserves to be quashed and set aside. The learned Counsel has also pointed out that though the concerned person was a substitute attorney, the learned Lower Appellate Court has erroneously taken a view that there was no authorisation produced by the appellant to substantiate the locus of such attorney to prefer the appeal.

4. On the other hand, Mr. A.D. Bhobe, learned Counsel appearing for the respondents has submitted that the appellants have been negligent in pursuing their remedy in filing the appeal and, as such, the learned Judge was justified to dismiss the application for

condonation of delay. The learned Counsel further points out that as the appellants were conscious that there was no case on merits they had deliberately not filed the appeal in time. The learned Counsel further points out that as the learned Judge has exercised discretion in dismissing the application for condonation of delay, the question of interference of this Court in the present second appeal would not arise.

5. I have considered the submissions of the learned Counsel and I have also gone through the records. It is well settled that the presumption is that a party does not deliberately approach a Court with delay. In the present case, the appellant which is a Village Comunidade, has preferred an appeal, along with an application for condonation of delay on the ground that the Advocate appearing for the appellant had not informed the outcome of the suit filed by the respondents against the appellant. The averments in the application are supported by an affidavit. Though the respondents have disputed the correctness of the averments, there is absolutely no material produced on record by the respondents to show that the appellants had deliberately approached the Appellate Court belatedly which gave them an added advantage against the respondents. It is now also well settled

that the Courts while examining an application for condonation of delay have to take a justice oriented approach. No doubt, for lack of urgency in pursuing the remedy the respondent has to be compensated adequately. The parties cannot suffer on account of a lapse of the Advocate and his inaction, especially when Committee of the Comunidade is expected to protect the interest of members of the Comunidade.

6. In the facts and circumstances of the case at hand and considering that the ground on which the learned Judge has dismissed the application, and as the attorney who had filed the appeal was a substitute attorney and, as such duly authorised to prefer such an appeal, I find that the discretion exercised by the learned Lower Appellate Court in rejecting the application for condonation of delay, is unjustified and contrary to the well settled principle of law. As such, the learned Lower Appellate Court was not justified to dismiss the application for condonation of delay. Needless to say, such an application has to be granted subject to payment of costs by the appellant to the respondents, which are quantified at Rs.20,000/-, to be paid by the appellants to the respondents as condition precedent. The

first question of law is answered accordingly.

7. With regard to the other substantial questions of law, as the matter would have to be decided by the learned Lower Appellate Court, on its own merits, such questions need not be answered in the present appeal. All contentions of the parties with that regard are left open.

8. In view of the above, I pass the following :

O R D E R

(I) The appeal is partly allowed.

(II) The impugned Order dated 6/2/2013, passed by the Adhoc District Judge -1, North Goa, Panaji in Civil Misc. Application No. 40/2011 is quashed and set aside.

(III) The application for condonation of delay filed by the appellant before the learned Lower Appellate Court is allowed, subject to payment of costs of Rs.20,000/- by the appellant to the respondents, as condition precedent.

(IV) The learned Lower Appellate Court shall register the appeal and proceed to decide such appeal after hearing the parties, in

accordance with law.

(V) The appeal stands disposed of accordingly.

F.M. REIS, J.

ssm.