

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.118 of 2015**

M/s. Prudential Group,
having office at 401, 4th
Floor, Durga Chambers,
18th June Road, Panaji, Goa,
through its Managing Partner
Shri Gaurang Suctancar .. Petitioner

Versus

1. Mr. Milton Fernandes,
son of Duminhos Fernandes,
major of age, business,
r/o H.No.C-16/755,
Amaral Waddo, Tiswadi,
Goa.
2. The Sarpanch/Secretary,
Village Panchayat of
Taleigao, Tiswadi Taluka,
Goa. .. Respondent

Mr. Parag Rao, Advocate for the petitioner.

Mr. E. Dias, Advocate for the respondent no.1.

Mr. P. A. Kamat, Advocate for the respondent no.2.

CORAM :- C. V. BHADANG, J.

DATE :- 7th JUNE, 2016.

ORAL JUDGMENT :

By this petition, the petitioner is challenging the judgment and order dated 31/12/2014 passed by the learned Ad hoc District Judge at Panaji in Civil Revision Application No.37/2014. By the impugned judgment, the Civil Revision Application has been

allowed. The net result is that the delay of about 7 months and 17 days in filing the appeal before the learned Additional Director of Panchayat stands condoned.

2. The brief facts are that on the basis of a complaint filed by the petitioner, the Deputy Director of Panchayat, by a judgment and order dated 09/12/2013, had directed the suit structure belonging to the first respondent (second respondent before the Deputy Director) to be demolished and failing which, the Secretary of the Second respondent- Village Panchayat was directed to remove the same. The respondent no.1 sought to challenge the same before the learned Additional Director by filing an appeal which was barred by limitation. In such circumstances, the respondent no.1 filed an application for condonation of delay on the ground that the petitioner had engaged a Lawyer to represent him and the said Lawyer had informed the petitioner that whenever required, he would be called and it is not necessary for the respondent no.1 to appear for every hearing of the case. It was contended that the respondent no.1 relied upon the assurance of his Lawyer. It was contended that the respondent no.1, on receipt of a notice dated

21/08/2014, intimating that demolition of his house was scheduled on 26/08/2014, learnt about the dismissal of the appeal. On enquiry, it was found that the Lawyer did not appear on any date. It was also contended that on account of some serious ailment of his mother, the respondent no.1 could not attend the case personally.

3. It was contended that considering the date of knowledge, there was no delay. The application was opposed on behalf of the petitioner. It was contended that the respondent no.1 had not engaged any Lawyer to represent him and as such, the ground based on failure of the Lawyer to attend the case is not borne out of the record. It was also contended that the respondent no.1 had not given any details of the ailment of his mother and has not produced any medical certificate.

4. The learned Additional Director, by an order dated 26/09/2014, has dismissed the application. It was found that the respondent no.1 was not diligent in taking steps for filing the appeal. This order was challenged by the respondent no.1 before the learned District Judge in Civil Revision Application No.37/2014. The learned District Judge framed a solitary point as to whether sufficient cause to

condone the delay in filing Panchayat Appeal is made out. The learned District Judge answered the same in the affirmative and thus, while allowing Civil Revision Application, has condoned the delay, which judgment is the subject matter of challenge in this petition.

5. I have heard Shri Rao, the learned Counsel for the petitioner, Shri Dias, the learned Counsel for the respondent no.1 and Shri Kamat, the learned Counsel for the respondent no.2.

6. It is submitted on behalf of the petitioner that the petitioner has neither given the name of the Counsel nor affidavit of any such Counsel is produced on record to substantiate the ground based on failure of the Counsel to attend the case. It is next submitted that there is no medical certificate about the ailment of the mother of the respondent no.1 produced on record. It is contended that the said ground would not be available to the respondent no.1, for claiming condonation of delay. It is also submitted that the learned District Judge has proceeded to condone the delay on the ground, which was not urged by the respondent no.1.

7. The learned Counsel appearing for the respondent no.1 has supported the impugned order. It is submitted that in the matter of condonation of delay, the Court has to take a liberal view and in the absence of any active negligence or lack of diligence, the delay deserves to be condoned.

8. I have given my anxious consideration to the rival circumstances and the submissions made. In order to ascertain the ground made out on behalf of the petitioner, the record and proceedings before the Deputy Director of Panchayat in proceedings No.DDPN/Taleigao/Tis/11/2012 was called for. Indeed, the ordersheets show that the respondent no.1 had personally put in appearance on 21/02/2013. The respondent no.1 (respondent no.2 before the Deputy Director) had undertaken to file Vakalatnama during the next hearing. It is contended on behalf of the respondent no.1 that the concerned Counsel neither filed Vakalatnama nor remained present.

9. The learned District Judge has in paras 8 and 9 has found that the learned Director of Panchayat does not specify anything as regards the intimation of the said demolition order to the applicant i.e. the present

respondent no.1. The learned District Judge has found that there was no malafide intention on the part of the petitioner "to frustrate the proceedings initiated against him." On such finding, delay is condoned. It is trite that in the matter of condonation of delay, normally the Courts adopt a liberal approach as decisions on merits have to be preferred, to decisions on technicality. It is further well settled that no party stands to gain by approaching the Court late and there is no presumption that delay is intentional. (See the case of **Collector, Land Acquisition, Anant Nag Vs. Mst. Katiji**, Reported in AIR 1987 SC 1353). Normally, in the case of a delay, which cannot be said to be of a substantial period, the Courts are justified in adopting a liberal approach. (See the case of **Esha Bhattacharjee vs Managing Committee of Raghunathpur Nafar Academy**, reported in (2013)12 SCC 649). If in such circumstances, the learned District Judge has found that there was no negligence or malafide intention on behalf of the petitioner, I do not find any reason to interfere with the same in exercise of supervisory jurisdiction under Article 227 of the Constitution of India. However, the condonation of delay would be subject to the respondent no.1 paying costs of Rs.5,000/- to the Goa Legal Services

Authority, Panaji, within a period of two weeks from today.

10. In the result, the petition is dismissed subject to the condition that the first respondent deposits Rs.5,000/- with the Goa Legal Services Authority, Panaji within a period of two weeks from today. The Additional Director of Panchayat shall decide the appeal as expeditiously as possible and preferably, within a period of three months from the date of receipt of this order. Parties to cooperate for early disposal of the matter.

C. V. BHADANG, J.

SMA