

IN THE HIGH COURT OF BOMBAY AT GOA

MISC.CIVIL APPLICATION NO. 151 OF 2016

IN

STAMP NUMBER MAIN NO. 267 OF 2016

SHRI. TEJARAM MONORAM CHOWDHARY
AND ANR.,

... Applicants

Versus

SHRI. SHEIKH ABDUL ARIF AND ANR.,

... Respondents

Shri. E. Usapkar, Advocate for the applicants.

Shri Joaquim Godinho, Advocate for the respondent no.1.

Shri S. R. Naik, Advocate for the respondent no.2.

Coram:- NUTAN D. SARDESSAI, J.

Date:- 21st October, 2016

P.C.

Heard Shri E. Usapkar, learned Advocate for the applicants who contended that the applicants were diligent in pursuing the matter before the MACT till their then advocate on record advised them that their presence would not be required and they would be informed about the order as and when it is passed and they were not aware of the order passed in the matter since they had not heard anything from their advocate. It is only upon the receipt of the notice in the Execution Proceedings in March, 2015 was it known to them that an award was passed by the learned MACT and which they wanted to challenge in appeal. They were otherwise not well educated and were not aware of the intricacies of law and Court procedures. They had contacted a new advocate and it is only at that time when the new advocate explained to them that they were required to challenge the

award by preferring an appeal did they file the Appeal alongwith the application for the condonation of delay in January, 2016 as the Advocate was otherwise busy with other matters due to his previous engagements. They had made out a sufficient cause for condoning the delay and therefore the delay had to be condoned and the appeal had to be registered as otherwise the applicants would suffer grave prejudice in case the delay was not condoned.

2. Shri J. Godinho, learned Advocate for the respondent no.1 submitted that the whole conduct of the applicants was not bonafide and that they had not accounted for the delay of 2 years and 4 months properly for condoning the delay. They had otherwise not accounted for the period when the matter was earlier handled by the then Advocate. In any event, the conduct of the applicants did not entitle them to the condonation of delay in the matter. Besides, the award fastened the liability only on the applicant no. 2 but the contents of the application were affirmed on oath by the applicant no.1 who was not fastened with the liability by the MACT. Hence the applicants had failed to carve out any reason for condoning the delay and hence the application had to be dismissed.

3. The respondent no.2 contended that the applicants had even deposed before the MACT and therefore their whole claim of having lost the track of the file was not acceptable nor tenable and even otherwise no sufficient grounds were stated for condoning the delay.

4. It is apparent from the records that the award was passed by the learned MACT on 27.6.2013 which is sought to be assailed in the

appeal alongwith the application for the condonation of delay filed in January, 2016 almost more than 2 years and 4 months later.

5. The applicants had tried to buttress a case that they were instructed by their then advocate that they would be informed about the outcome of the case, and on account of his failure he had not followed up the matter with the advocate. However the applicants had not set out a case explaining the circumstances in which the delay was caused or the negligence of the then Advocate nor filed any supporting affidavit at his instance. Besides what they have tried to account for the delay is only the period after the issuance of notice by the Executing Court and the period spent by the new advocate to file the application after being free from his other engagement and occupation.

6. No satisfactory grounds have been set out by the applicants to condone the delay. In view thereof, i do not find any merit for condoning the delay and hence dismiss the application.

NUTAN D. SARDESSAI, J.