

IN THE HIGH COURT OF BOMBAY AT GOA.
MISCELLANEOUS APPLICATION NO. 217 OF 2013
IN
STAMP NUMBER MAIN NO. 319 OF 2013.

SMT. YESHUMATI N. GAONKAR
(SINCE EXPIRED THOROUGH LR'S
AND 5 ORS.)

..... APPLICANTS.

Versus

SHRI PRAKASH T. GOANKAR
AND 27 ORS.

..... RESPONDENTS.

Mr. A. Kakodkar, Advocate appearing for the applicants.

Mr. A. Kansar, Advocate appearing for the respondents.

Coram:- K. L. Wadane, J.

Reserved on:- 11th February, 2016.

Pronounced on:- 18th February, 2016.

ORDER

This application is filed by the applicants for condoning the delay of 1557 days caused for filing an appeal against the judgment and decree passed by the Ad-hoc District Judge-FTC at Panaji dated 13.7.2007.

2. The brief facts of the case are as follows:-

The applicants are illiterate with little or no education. The applicants had engaged services of Advocate Braganza from Mapusa who initially was attending the suit and was being assisted by the Advocate S. Chodankar. Mr. S. Chodankar, Advocate started attending

the Court when he set up his independent practice and he was exclusively looking after the suit. The suit of respondent nos. 1 to 7 was dismissed by the trial Court and Mr. Chodankar, informed the applicants that they have succeeded in the suit. The applicants recently came to know that the trial Court has also dismissed the counter claim of the applicants. But this fact was never informed to them by their advocate. The respondents have filed first appeal and applicants were represented by the same Advocate Mr. Chodankar. After the impugned judgment and decree dated 13.7.2007, the applicants advocate informed them that they have succeeded in the First Appeal. The applicants being illiterate never read the impugned judgment and decree but blindly believed in their Advocate.

3. The applicants did not pursue the matter. Sometime around 13.8.2012 i.e after almost about 5 years, the applicants received a notice for mutation from the Mamlatdar of Bicholim. In that proceedings the applicants had engaged services of Advocate Ms. Samira Gawas. The said Advocate did not inform the applicants that the impugned judgment and decree is required to be challenged in the Second Appeal. Sometime in the month of December, 2012, the applicant no. 3 was in Goa and discussed the pendency of the mutation proceedings with his friend who informed the applicant no. 3 about Advocate Siddeshwar Kadam. Mr. Siddeshwar Kadam, after going through the judgment and decree informed him that the applicants must engage an advocate practising in the High Court to prefer a

Second Appeal for which delay has been caused as referred above.

4. I have heard the arguments of Mr. Amey Kakodkar, learned counsel appearing for the applicant and Mr. A. Kansar, learned Counsel appearing for the respondents.

5. The grounds on which the delay is sought to be condoned are that Mr. Chodankar learned counsel representing the applicants in the trial Court as well as the First Appellate Court did not inform about the decision of the Court particularly rejection of the Counter Claim of the applicants and decision in the First Appeal. The second ground on which the delay is sought to be condoned is that even the Advocate Ms. Samira Gawas who was representing the applicants in the mutation proceedings before the Mamlatdar did not inform/advise them to file a Second Appeal before this Court. Mr. Kakodkar, learned counsel appearing for the applicants has relied upon the observations of the following cases:-

1. ***N. Balakrishnan Vs. M. Krishnamurthy, (1998)7 SCC 123.***
2. ***Sangita C. Thakur Vs. Dnyansagar Education Society, 2015(3) ALL MR 130.***

6. I have gone through the above cited authorities. The observations of the above cited authorities are inapplicable to the facts of the present case, mainly because the explanation offered by the

applicants is not acceptable for the following reasons:-

There is delay of more than five years in presenting the appeal and there are 6 applicants however, none of them have inquired about the decision of the trial Court as well as the Appellate Court for more than 5 years. This conduct of the applicants appears to be unacceptable because in ordinary circumstances no man of ordinary prudence can keep silence for more than 5 years. The dispute relates to the immovable property. Inaction on the part of the applicants to keep the track on the proceedings appears to be unacceptable.

7. The main ground on which the delay is sought to be condoned is that the Advocate representing the applicants in the trial Court as well as the First Appellate Court did not inform them about the decision which amounts to the negligence on the part of the Advocate representing the applicants. If at all Mr. Chodankar was negligence as alleged by the applicants, in normal course some action by the applicants against the advocate is expected, if at all the concerned Advocate was negligence. In normal course the applicants may have atleast informed the Bar Council, however, nothing is brought on record to show that the applicants have taken some steps to protest the conduct of the alleged negligence on the part of their Advocate.

8. There is delay of 1557 days caused for filing an appeal. Length of the delay is not material if it is properly explained. It is well

settled that while dealing with the application for condonation of delay, the Court should not adopt the hyper technical view. At the same time, it is also well settled that delay caused in filing the appeal has to be explained properly. Even unexplained delay of short period cannot be condoned. Length of the delay is not the matter, acceptability of the explanation is only criteria. Herein, in the present case, the explanation offered by the applicants for such a long delay is not at all acceptable.

9. In such circumstances, I am of the opinion that the applicants have not given acceptable explanation, therefore, application is liable to be dismissed. Accordingly, it is dismissed.

K. L. WADANE, J.

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