

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.453 of 2015

Mohan Khemlo Bandekar,
major of age, Indian National,
r/o H. No. 126, Dhawe Tar,
Valpoi, Sattari, Goa. .. Petitioner

Versus

1. The Additional Collector-II,
North Goa, Collectorate Building,
Panaji, Goa.
2. Shri Rajaram Khemlo Bandekar
major of age, Indian National,
r/o H.No.126, Dhawe Tar,
Valpoi, Sattari, Goa. .. Respondents

Mr. Shivan Dessai, Advocate for the petitioner.

Mr. Manoj Govekar, Advocate for the respondent no.2.

CORAM :- S. B. SHUKRE, J.

Date : 12th January, 2016.

ORAL JUDGMENT :

Heard.

2. Rule. Rule, made returnable forthwith. Heard finally,
by consent.

3. This Writ Petition is preferred against the impugned
order dated 16/10/2014, passed by the Additional Collector-II,
North Goa District, Panaji, Goa, thereby rejecting the application

for condonation of delay, filed by the petitioner.

4. The petitioner, being aggrieved by the order passed by the Mamlatdar under Section 4 of the Goa, Daman and Diu Mamlatdar's Court Act, 1966 (Mamlatdar's Court Act, for short), directing the petitioner to remove obstructions from the right of way claimed by the respondent no.2, preferred a Revision Application in terms of Section 22 of the Mamlatdar's Court Act. The Revision Application, in terms of subsection (1) and subsection (2) of Section 22, ordinarily, has to be preferred before the Collector, who has been invested with revisional powers. However, under subsection (3), a power has been conferred upon the Government to authorise, by notification in official gazette, any officer not below the rank of Deputy Collector to exercise all the powers of the Collector under Section 22 of the Mamlatdar's Court Act.

5. It is the contention of the petitioner that when he consulted his Lawyer regarding filing of the Revision Application, he was advised by his Lawyer that it could also be filed before the Deputy Collector. Accordingly, on his instructions, his Lawyer filed a Revision Application under Section 22(3) of the Mamlatdar's Court Act before the Deputy Collector. The petitioner submits that filing of such an application before the

Deputy Collector was under bonafide belief that the Deputy Collector did have jurisdiction to entertain and try the application. When an objection in this regard was taken by the respondent no.2, same came to be allowed by the Deputy Collector, after granting hearing to the petitioner as well as the respondent no.2. The deputy Collector held that as no notification was issued and published in the official gazette by the Government at any point of time, authorising him to decide the said application, he had no jurisdiction to entertain and try the application.

6. The petitioner, thereafter, approached the Collector i.e. the Additional Collector-II, who is conferred with the revisional powers under Section 22, by filing a Revision Application, together with an application for condonation of delay, occurred in filing the same. The application was vehemently opposed by the respondent no.2. The Additional Collector held that no due diligence was shown by the petitioner in prosecuting his remedy under the law before a wrong forum and that the petitioner, being assisted by a Lawyer, could not be said to be having no knowledge about lack of jurisdiction of the Deputy Collector, in the matter. Accordingly, the Additional Collector by an order passed on 16/10/2014 rejected the application. Not being satisfied with the same, the petitioner is before this Court in the present writ petition.

7. The learned Counsel for the petitioner submits that the order passed by the learned Additional Collector-II is manifestly perverse and arbitrary as it does not take into account the fact that the Revision Application was preferred by the petitioner before the Deputy Collector, well within time and it was done on the advice of the Lawyer. He submits that almost within a period of one month from the rejection of his Revision Application by the Deputy Collector, the petitioner approached the learned Additional Collector and there is no material available on record, from which it can be said that there was some malafides on the part of the petitioner, in prosecuting a wrong remedy. He also points out that the learned Additional Collector has not considered in proper perspective the provisions of Section 14(2) of the Limitation Act, which take care of such a situation and provides the parties some relief.

8. The learned Counsel for the respondent no.2, opposing the writ petition, submits that due diligence and bonafides are something, which must be pleaded and proved by the party relying upon the principle of prosecuting remedy before the wrong Court in good faith, as envisaged under Section 14(2) of the Limitation Act. He submits that the application filed by the petitioner for

condonation of delay would show that the petitioner was not prosecuting remedy before wrong Court in a bonafide manner. He points out from the application that the name of the Lawyer is conspicuously absent from the application and no material is placed on record in support of the contentions raised in the application. He further submits that the petitioner has deliberately and intentionally chosen a wrong forum, just to harass the respondent no.2, as it is his wont to persecute the respondent no.2, by employing different tricks. He submits that the petitioner is in the habit of filing wrong complaints before various authorities and filing a Revision Application before a wrong forum and to delay the matter is a part of the strategy of the petitioner to put the respondent no.2 under constant pressure. He submits that unless and until due diligence and bonafide action in prosecuting the remedy before the wrong Court are pleaded and proved, the petitioner could not be given benefit of provisions of Section 14(2) of the Limitation Act. For this submission, he places reliance on the following decisions :

(i) ***Premlaxmi and Co, a Registered Partnership Firm Vs. Ingersoll Rand (India) Limited and Ors,***
2011(2) All MR 283.

(ii) ***Foreshore Co-operative Housing Society***

Limited Vs. Praveen Desai, 2006(2) All MR 371.

9. In the cases of **Premlaxmi** and **Foreshore Co-operative Housing Society Limited** (supra), it has been held by the Division Bench and learned Single Judge of this Court respectively that the due diligence and bonafide action must be proved by the party seeking to rely upon the provisions of Section 14(2) of the Limitation Act. In the case of **Foreshore Co-operative Housing Society Limited** (supra), the learned Single Judge of this Court, following the law laid down by the Hon'ble Apex Court in the case of **Madhavrao Narayanrao Patvardhan Vs. Ram Krishna Govind Bhanu and Ors.**, reported in AIR 1958 SC 767, has held that it is well settled law that it is for the concerned party to plead and prove the due diligence and bonafides. In this very case, Hon'ble Apex Court has also clarified the meaning of 'good faith'. The Hon'ble Supreme Court has observed that the meaning of 'good faith' has not to be understood by making any reference to the provisions of the General Clauses Act and it has to be perceived as something done with due care and attention, having regard to the definition of 'good faith' appearing in Section 2(h) of the Limitation Act. Now, keeping in view these principles of law, let us advert to the facts of the present case.

10. Although, it is the contention of the learned Counsel for the respondent no.2 that due diligence has not been pleaded by the petitioner, I find the position to be otherwise. In the application filed for condonation of delay by the petitioner, the petitioner has very well averred that he, being not a Lawyer, had engaged a Lawyer on 19/07/2012, who, on that day, filed a Revision Application in the Court of Deputy Collector and Sub-Divisional Magistrate under the impression that in terms of the provisions of Section 22(3) of the Mamlatdar's Court Act, the Deputy Collector was authorised to decide such an application. It is not in dispute that the application that was filed before the Deputy Collector was well within time. Now, if we have a look at the Revision Application filed by the petitioner before the Deputy Collector, we would find that the application, specifically mentions the fact that since the order impugned in the Revision Application was passed by the Court of Mamlatdar, the Court of the Deputy Collector had jurisdiction to entertain and dispose of the Revision Application. If these pleadings are considered in their proper perspective, an inevitable conclusion would arise that the Lawyer of the petitioner did act under a bonafide belief that the Court of Deputy Collector had jurisdiction to entertain and dispose of the Revision Application filed under Section 22 of the Mamlatdar's

Court Act. If this were not so, the Lawyer of the petitioner would not have mentioned anything about the jurisdiction. Had he not so mentioned about it, there would have been some different conclusion. It could only be that the Revision Application was drafted and filed negligently and carelessly. But, that was not so. These facts would enable me to hold that the petitioner discharged the burden of pleading and proving that the Revision Application was filed before wrong Court under a bonafide belief that it was maintainable there and since it was filed well within limitation, it was also with due diligence. No other material is present on record nor could be pointed out to me by the learned Counsel for the respondent no.2 to find that the conclusion so drawn is wrong.

11. The learned Counsel for the respondent no.2 has argued that the petitioner is in the habit of filing false complaints or false proceedings before various authorities and filing a Revision Application before wrong authority, was one of his ploys adopted to harass the respondent no.2. The respondent no.2, however, has not given any details of the complaints which were found to be false by the concerned authorities to support his contention. In any case, the Revision Application, having been filed by the petitioner initially before the Court of Deputy Collector with due diligence and in good faith, the petitioner would be

entitled to benefit of Section 14(2) of the Limitation Act which excludes the period during which wrong remedy is prosecuted with due diligence from the period of limitation for filing any application. Needless to say, a revision application under Section 22 of the Mamlatdar's Court Act would be an application envisaged by Section 14(2) read with Section 2(b) of the Limitation Act.

12. So far as the facts of the cases of ***Premalaxmi*** and ***Foreshore Co-operative Housing Society Ltd.*** (supra), are concerned, I must say that the facts of the instant case are altogether different from the facts of both these cases. In the case of ***Premalaxmi*** (supra), the transaction between the appellant and the respondent was of commercial nature and even then, the appellant chose to prosecute a remedy under the Consumer Protection Act. That was the reason why, it was held that the appellant could not be said to be acting in a bonafide manner. In the case of ***Foreshore Co-operative Housing Society Ltd.*** (supra), the suit was filed by the petitioner initially before the Munsiff's Court at Miraj and since the Munsiff's Court at Miraj did not have pecuniary jurisdiction to entertain a suit, subsequently, the suit was filed before the Court at Tikoni. It was found in that case that the petitioner or the plaintiff had not stated in the

original suit the fact that the Munsiff's Court did have pecuniary jurisdiction, by making a statement as to the value of the subject matter of the suit. Such are not the facts of the present case, which have been discussed elaborately in the earlier paragraphs. Therefore, although the principles, on which these cases are based, have been applied to the instant case by me, these cases, so far as the factual aspects are concerned, would not be of any help to the respondent no.2. All these facts and also the provisions of law as contained in Section 14(2) of the Limitation Act, have not been considered by the learned Additional Collector and the result is passing of an arbitrary order impugned here. Therefore, this is a fit case, warranting interference with the discretion exercised by the learned Additional Collector.

13. In the circumstances, the Writ Petition is allowed. The impugned order is quashed and set aside. The delay is condoned. The learned Additional Collector is directed to register the Revision Application and dispose it of in accordance with law.

14. Rule is made absolute in these terms. No costs.

S. B. SHUKRE, J.

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