

IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO.343 OF 2016.

1. Shri Dasharath Naik
@ Pana Naik, Son of late
Ranu Naik, aged 79
years, widower
 2. Shri Rama Pana Naik,
Son of Dasharath @
Pana Naik, Aged 52 years
 3. Smt. Shobha Rama Naik,
wife of Rama Naik,
Aged 41 years, housewife
 4. Shri Shrikant Dasharath
Naik, Son of Dasharath @
Pana Naik, Aged 49 years
and his wife
 5. Smt. Sulaksha Shrikanth
Naik, wife of Shrikant D.
Naik, aged 41 years
All r/o House No.140
(69/B old), Morambi-O-
Grande ,Waddi Merces,
Tiswadi-Goa.
- Petitioners.

Versus

1. Shri Bosco Hilario da
Conceicao Son of late
Francisco Xavier Da
Conceicao, Major of age
2. Mrs. Ida Conceicao
Wife of Bosco Hilario da
Conceicao, Major of age
(age not known)
3. Shri Alvaro Calazancio Da
Conceicao son of late
Francisco Xavier Da
Conceicao, Major of age

(age not known)

4. Mrs. Alvaro Calazancio
Da
Conceicao, Wife of Alvaro
Calazancio Da Conceicao,
Major of age(age not
known)
5. Maria Salome Da
Conceicao Daughter of
Late Francisco
Xavier Da Conceicao,
Major of age(age not
known) All the residents
H. No. B-282, Near Ram
Temple, Betim
Bardez Goa.
6. Mr. Alexander Cabral
(deceased) Son of late
Francisco Cabral
Aged 51 years,
- 6a. Miss Mabel Cabral, D/o.
late Alexander Cabral,
Age 22 years, Residents
of H. No. 170/1, Vaddy
Merces, Goa.
- 6b. Mr. Myron Cabral, D/o.
late Alexander Cabral,
Age 20 years, Residents
of H. No. 170/1, Vaddy
Merces, Goa.
7. Mrs. Natalie Cabral alias
Natalie Emilia Pereira
Wife of Mr. Alexander
Cabral, Aged 41 years
Both R/o H. No.170/1,
Vaddy, Mercas, Goa.
8. Mrs. Shweta Yatin
Mayekar Wife of Shri
Yatin Mayekar, Aged 30
years, Resident of

Royal Garden, A-
Wing, 4th floor, flat no.
403, Dr. Annie Besant
Road, Opp. Poonam
Chambers Worli Mumbai
400 018.

9. Mr. Anil Hoble, son of
late Raghuvir Hoble,
Aged 56 years,
 10. Mrs. Sandhya Hoble
Wife of Mr. Shri Anil
Hoble, Aged 53 years,
 11. Mr. Milind Hoble,
son of Mr. Anil Hoble,
Aged 33 years,
All residents of H. No.
345, Ward No. IX,
B.C Merces Goa.
 12. Mr. Lavu Hoble son of
late Shri Raghuvir Hoble,
aged about 25 years, R/o
Ward No. IX, B.C. Merces
Goa
 13. Mr. Suraj Hoble son of
late Shri Raja Hoble, aged
25 years, R/o Ward No.
IX, B.C. Merces Goa
 14. Mr. Khapru Hoble son of
late Shri Pundalik Hoble,
aged about 50 years, R/o
Ward No. VIII, Fansabhat,
Wadi Merces Goa
 15. Village Panchayat of
Merces, Through its
Secretary Merces Goa
- Respondents.

Mr. A. Nachinolkar, Advocate for the petitioners.

Mr. J. Godinho, Advocate for the respondent nos. 1 to 5, 7 to 12
and 14.

Mr. A. D. Bhobe, Advocate for the respondent no.15.

CORAM : F.M. REIS, J.

DATE : 18th November, 2016.

ORAL JUDGMENT

Heard Mr. A. Nachinolkar, learned Advocate for the petitioners, Mr. J. Godinho, learned Advocate for the respondent nos. 1 to 14 and Mr. A. D. Bhobe, learned Advocate for the respondent no.15.

2. Rule.

3. Heard forthwith with the consent of the learned counsel appearing for the respective parties.

4. Mr. J. Godinho learned counsel waives notice on behalf of the respondents no.1 to 14 and and Mr. Bhobe, learned Advocate waives notice on behalf of the respondent no.15.

5. The challenge in the above petition is to the dismissal of an application for condonation of delay of 30 days in filing an appeal, by order dated 16.12.2015 passed in CMA no. 24/2014.

6. Briefly it is the case of the petitioners that the petitioners filed a suit for injunction and other reliefs against the respondent being Regular Civil Suit No.90/2012/D in the Court of the learned Civil Judge, Junior Division, Panaji. In such suit petitioners filed an application for temporary injunction which came to be rejected by an order dated 6.12.2013. The petitioner decided to prefer an appeal against the said order before the learned District Judge, but however as there was delay of 30 days in filing such appeal the petitioners moved an application for condonation of delay which came to be dismissed by the impugned order.

7. Mr. Nachinolkar, learned Counsel for the petitioners points out that the delay of 30 days has been satisfactorily explained, as according to him, the petitioner no.2 who was looking after the matter on behalf of all the other petitioners had to proceed to Pune on account of some urgent work and thereafter the father of the petitioners became ill which prevented the petitioner no.2 to move the Court within time prescribed to challenge the said order. It is further pointed out that in support of his application, the boarding pass of 19.1.2014 of his travel to Pune was produced. It is further

submitted that the petitioners had approached his lawyer within time prescribed to take steps to file an appeal which could not be finalised as the petitioner no.2 had to proceed to Pune. The learned Counsel further points out that the learned Judge has dismissed the application for condonation of delay essentially on the ground that no documentary evidence has been produced to substantiate the allegations. The learned Counsel has thereafter taken me through the judgment and order passed by the learned Judge to point out that the learned Judge has erroneously dismissed the application for condonation of delay which resulted in grave prejudice to the petitioners in pursuing their remedy of appeal.

8. On the other hand, Mr. Godinho, learned Counsel appearing for the respondent nos. 1 to 14 has supported the impugned order. The learned Counsel has further pointed out that the allegations are vague and there is no material to suggest that there was due diligence on the part of the petitioners to pursue his remedy of appeal. The learned Counsel further submitted that there is no documentary evidence produced by the petitioners in support of their contention and as such, the petition deserves to be rejected.

9. Mr. Bhobe, learned Counsel appearing for the respondent no.15 has supported the submission of Mr. Godinho, learned Counsel appearing for the respondent nos.1 to 14.

10. I have duly considered the submissions of the learned Counsel appearing for the respective parties and I have also gone through the record.

11. On perusal of the averments at paragraph 3 of the application there are specific averments therein to suggest that the petitioner no.2 was looking after the proceedings on behalf of all the other petitioners and that he had to proceed to Pune and thereafter there was illness of the father of the petitioner no.2 which resulted in the delay in preferring the appeal. On perusal of the reply filed by the private respondent no.1 to 14 though the allegations have been denied, nevertheless there is no specific allegations that the averments therein are patently false. Vague denials do not by itself put the burden on the applicant to produce evidence in support of the contents thereof. Incase there is a serious dispute with regard to the allegations the Civil Manual clearly provides that an inquiry has

to be conducted in such situation.

12. In the facts and circumstances of the present case, considering that the delay only of 30 days and that it now well settled that while examining an application for condonation of delay the Court has to take a justice oriented approach to ensure that the matters are decided on merits. I find that though there is some lapse on the part of the petitioners in pursuing the remedy diligently, nevertheless such delay/lapse itself is not so grave that it should result in dismissing the application for condonation of delay. There are no malafides attributed to the petitioners in pursuing the remedy of appeal belatedly. There is no positive material placed by the respondents to substantiate that the averments in the application for condonation of delay are false.

13. In such circumstances, I find that the impugned order has not considered the well settled principles of law and as such deserves to be quashed and set aside. Needless to say that the inconvenience caused to the private respondents has to be compensated in terms of costs which are quantified at ₹5000/- (Rupees five thousand only) to be paid by the petitioners to the

respondent nos.1 to 15 as condition precedent.

14. In view of the above, I pass the following:-

ORDER

- (i) The impugned order dated 16.12.2015 is quashed and set aside.
- (ii) The application for condonation of delay filed by the petitioners is allowed subject to the payment of costs of ₹5,000/-(Rupees five thousand only) as condition precedent to the respondent nos.1 to 15.
- (iii) Rule is made absolute in the above terms.

F.M. REIS, J.

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