

IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO. 46 OF 2016

MR. MADHU DATTARAM NAIK, REP THR.
POA MR. RUDRESH NAIK.

... Appellant

Versus

SMT. TULSHIBAI GOVIND GHADI AND 2
ORS.

... Respondents

Shri R.J. Pinto, Advocate for the Appellant.

Shri Deepak Gaonkar, Advocate for the Respondents.

Coram:- C. V. BHADANG, J.

Date:- 18th November, 2016

ORAL ORDER :

Normally, it would be preferable that the matters are decided on merits. However, this is a case where the facts do not warrant interference with the impugned order.

2. The respondents filed an application for resurvey way back in the year 1995 in respect of Survey No.602 of Village Sal, Taluka Bicholuim. The learned Deputy Collector called the report of the DSLR which was submitted in the year 1998. The learned Deputy Collector refused to accept the report and the application for resurvey was dismissed in the year 2000. The respondents filed an appeal being Land Revenue Appeal No.220/2000 challenging the dismissal. The Administrative Tribunal allowed the appeal in July, 2006 directing the confirmation of the report of the DSLR. In pursuance of

this, the learned Deputy Collector confirmed the report of the DSLR on 12/10/2011. This was challenged by the appellant by filing an appeal being Land Revenue Appeal No.96/2011. The appeal was dismissed in default on 18/07/2012. The appellant filed an application being Miscellaneous Civil Application no.141/2012 on 17/08/2012 for restoration of the appeal. The record discloses that the application for restoration was itself dismissed in default on 12/03/2014, but was subsequently restored on 12/12/2014. By the impugned order dated 12/02/2016, the Administrative Tribunal has dismissed the application for restoration on its own merits finding that the explanation given on behalf of the appellant "smacks of malafides and the record does not reveal any diligence on the part of the appellant in conducting the proceedings". It is this order which is the subject matter of challenge in this appeal.

3. I have heard the learned Counsel for the appellant and the learned Counsel appearing for the respondent. With the assistance of the learned Counsel for the parties, I have perused the impugned order.

4. It is submitted on behalf of the appellant that the advocate who was attending the matter had left the office of the senior advocate who was entrusted with the matter, without informing anything and, as such, there was no appearance on behalf of the appellant. It is submitted that the appellant is aged 75 years and, as such, was unable to attend personally. Reliance is placed on the decision of the

Hon'ble Supreme Court in the case of RAFIQ & ANR. V/s. MUNSHILAL & ANR. 1981 STPL (LE) 10926 SC in order to submit that the party may not be made to suffer for the lapse of the Counsel.

5. On the contrary, the learned Counsel for the respondent has supported the impugned order. It is submitted that there are gross laches and negligence on the part of the appellant, initially in prosecuting the appeal and, thereafter, in prosecuting the application for restoration which was earlier dismissed in default. The learned Counsel has pointed out the various order sheets as to how the matter has proceeded and, in particular, the order sheet dated 30/01/2015 when the power of attorney is shown to be present, but however, had failed to comply with the direction to produce the diary of the Counsel.

6. In reply, it is submitted by the learned Counsel for the appellant that the copy of the relevant sheet from the diary was produced, however the entire diary could not be produced as it was misplaced.

7. I have carefully considered the rival circumstances and the submissions made. In this case, the perusal of the various order sheets would show that the appellant has not been diligent in prosecuting the appeal initially and, thereafter, the application for restoration. The record also discloses that on 30/01/2015, the

attorney of the applicant was present. In my considered view, no exception can be taken to the finding recorded by the learned Administrative Tribunal in para 7 that the record does not show any diligence on the part of the applicant in the conduct of the proceedings. It is evident that the discretion to restore the appeal is a judicial discretion which has to be exercised in the facts and circumstances of the case as has been observed by the learned Administrative Tribunal.

8. In the case of RAFIQ (supra), the appeal was decided by the High Court on merits in the absence of the learned Counsel for the appellant and the appellant had sought rehearing of the appeal which application was dismissed. It can thus be seen that the facts of the present case are clearly distinguishable.

9. In the result, I do not find that a case for interference is made out. The appeal is without any merits and is accordingly dismissed with no order as to costs.

C. V. BHADANG, J.

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