

IN THE HIGH COURT OF BOMBAY AT GOA

MISC.CIVIL APPLICATION NO. 426 OF 2016

IN

STAMP NUMBER MAIN NO. 1543 OF 2016

SHRI. KALIDAS KASHINATH RAIKAR AND
ANR.,

... Applicants

V e r s u s

MR. MAHESH GURUDAS REVANKAR.

... Respondent

Mr. Arjun F. Naik, Advocate for the Applicants.

Mr. U. R. Timble and Mr., Advocate for the Respondent.

Coram:-

F. M. REIS, J.

Date:-

1st July, 2016

ORAL ORDER

Heard Mr. Arjun Naik, learned Counsel appearing for the Applicants
and Mr. Timble, learned Counsel appearing for the Respondent.

2. This is an application for condonation of delay of one year one month
and twenty days in filing a First Appeal challenging an exparte Decree dated
02.12.2014, passed by the learned Senior Civil Judge, Mapusa in Special Civil Suit
no. 10/2014/C.

3. Learned Counsel appearing for the Applicants has taken me through
the application for condonation of delay to point out that according to the
Applicants, the service of summons in the suit on the Applicants was not in
accordance with law and that the Applicants learnt about the exparte Decree only in
October, 2015 when a notice on the application for execution was served on them.

It is further pointed out that after receipt of such summons, the Applicants contacted the Lawyer to take necessary steps to protect the interest of the Applicants and that only in April, 2016, when the Applicants learnt that no appropriate steps were taken by the concerned Lawyer, the Applicants contacted a new Lawyer to take measures to assail the exparte Decree passed by the learned Judge. It is pointed out that accordingly the above First Appeal came to be filed challenging the Exparte Decree along with an application for condonation of delay.

4. The Respondents have filed their reply opposing the application for condonation of delay. It is pointed out by Mr. Timble, learned Counsel appearing for the Respondent, that the Applicants were very well aware about the pendency of the suit as according to him, in co-lateral proceedings filed by the Applicants under Section 138 of the Negotiable Instruments Act, the fact about the pendency of the suit was even pointed out by the learned Counsel appearing for the Applicants. It is further submitted that in any event there is no justifiable ground pointed out by the Applicant to explain the delay from October 2015 when the Applicant allegedly learnt about the exparte Decree. It is further pointed out that as the Applicants made a false averment in the application for condonation of delay, no discretion should be exercised in favour of such Applicants and, consequently, the application deserves to be rejected.

5. During the course of the hearing of the above application, learned Counsel appearing for the Applicants has brought to my notice the Judgment of the Apex court reported in **1981 (2) SCC 788** in the case of **Rafiq & anr. vs. Munshilal & anr**, giving much emphasis to the observations at para 3 therein,

which reads thus :

“The disturbing feature of the case is that under our present adversary legal system where the parties generally appear through their advocates, the obligation of the parties is to select his advocate, brief him, pay the fees demanded by him and then trust the learned advocate to do the rest of the things. The party may be a villager or may belong to a rural area and may have no knowledge of the court's procedure. After engaging a lawyer, the party may remain supremely confident that the lawyer will look after his interest. At the time of the hearing of the appeal, the personal appearance of the party is not only not required but hardly useful. Therefore, the party having done everything in his power to effectively participate in the proceedings can rest assured that he has neither to go to the High Court to inquire as to what is happening in the High Court with regard to his appeal nor is he to act as a watchdog of the advocate that the latter appears in the matter when it is listed. It is no part of his job. Mr. A.K. Sanghi stated that a practice has grown up in the High Court of Allahabad amongst the lawyers that they remain absent when they do not like a particular Bench. Maybe he is better informed on this matter. Ignorance in this behalf is our bliss. Even if we do not put our seal of imprimatur on the alleged practice by dismissing this matter which may discourage such a tendency, would it not bring justice

delivery system into disrepute. What is the fault of the party who having done everything in his 511power and expected of him would suffer because of the default of his advocate. If we reject this appeal, as Mr. A.K. Sanghi invited us to do, the only one who would suffer would not be the lawyer who did not appear but the party whose interest he represented. The problem that agitates us is whether it is proper that the party should suffer for the inaction, deliberate omission, or misdemeanour of his agent. The answer obviously is in the negative. Maybe that the learned advocate absented himself deliberately or intentionally. We have no material for ascertaining that aspect of the matter. We say nothing more on that aspect of the matter. However, we cannot be a party to an innocent party suffering injustice merely because his chosen advocate defaulted. Therefore, we allow this appeal, set aside the order of the High Court both dismissing the appeal and refusing to recall that order. We direct that the appeal be restored to its original number in the High Court and be disposed of according to law. If there is a stay of dispossession it will continue till the disposal of the matter by the High Court. There remains the question as to who shall pay the costs of the respondent here. As we feel that the party is not responsible because he has done whatever was possible and was in his power to do, the costs amounting to Rs.200/- should be

recovered from the advocate who absented himself. The right to execute that order is reserved with the party represented by Mr. A.K.Sanghi.”

6. On the other hand, Mr. Timble, learned Counsel appearing for the Respondent, has pointed out that as the records reveal that the Applicants have deliberately made a false statement, no discretion can be exercised in favour of the Applicants and, consequently, the application deserves to be rejected.

7. On perusal of the records, I find that it cannot be disputed that there was inaction on the part of the Applicants in pursuing the remedy if at all they so desire in preferring the Appeal challenging the exparte Decree passed by the learned Trial Judge. But, however, it is now well settled by the Apex Court that whilst deciding an application for condonation of delay, the Court has to take justifiable approach and, in such circumstances, I find that the delay in filing the Appeal deserves to be condoned subject to paying compensatory cost to the Respondent herein. The learned Counsel appearing for the Applicants, upon instructions, offers to pay a sum of Rs. 1 lakh as cost in case the Appeal itself is disposed of and the learned Trial Judge is directed to decide the suit afresh after giving opportunity to the Applicants to file their written statement and lead evidence.

8. Mr. Timble, learned Counsel appearing for the Respondent, has no objection.

9. Hence, the application for condonation of delay stands condoned accordingly.

F .M. REIS, J.

arp/*