

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 525 OF 2016

MR. KRISHNA BALU GAOKAR. ... Petitioner
Versus
THE SANQUELIM MUNICIPAL COUNCIL. ... Respondent

Mr. Shivan Desai, Advocate for the Petitioner.

Coram:- C. V. BHADANG, J.

Date:- 27th June, 2016

P.C:

Heard the learned Counsel for the petitioner. None appears for the respondent, though served.

2. The petitioner is challenging the order dated 31.03.2016 passed by the Goa Municipalities Appellate Tribunal, Panaji rejecting Miscellaneous Application No. 41/2015, thereby refusing to condone the delay and to set aside the order of dismissal in default of Municipal Appeal No. 52/2010, filed by the petitioner.

3. There is a delay of 11 months and 13 days in applying for restoration of the appeal. It appears that the appeal was filed by the petitioner on 05.10.2010 and it was earlier dismissed in default on 08.01.2013 on account of continuous default on behalf of the petitioner and his Counsel on four dates of hearing. However, the earlier order of dismissal of default was recalled and the matter was restored. Thereafter on 26.06.2014, the appeal was adjourned at the

request on behalf of the petitioner and he was directed to file written arguments within 15 days, which order was not complied with. On subsequent date i.e. 07.08.2014, neither the petitioner nor his Advocate appeared when the appeal came to be dismissed in default.

4. A perusal of the impugned order passed by the Municipalities Appellate Tribunal would show that the learned Presiding Officer after considering the reasons given in support of the prayer for condonation of delay has found, and to my mind rightly so, that the petitioner has not shown sufficient cause, for not filing the application for restoration in time. The impugned order does not exhibit any jurisdictional error so as to warrant interference. It is trite that although, the Courts are obliged to take a liberal view of the matter, where the delay is of small duration and which is properly explained, such delay cannot be mechanically condoned, when no proper case, in order to show that the party was diligent enough in prosecuting the remedy and there was sufficient cause for not taking recourse to the remedy in time, is made out. In the overall circumstances, I find that no case is made out for interference. The petition is without any merits and is hereby dismissed, with no order as to costs.

5. The learned Counsel for the petitioner, states at this stage that the petitioner is desirous of applying for regularisation of the structure to the appropriate authority. It is needless to mention that if, such an

application is made, the competent authority shall decide the same in accordance with law. It is made clear that this Court has not expressed any opinion on the merits of any such regularisation application, if filed.

C. V. BHADANG, J.

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