

IN THE HIGH COURT OF BOMBAY AT GOA

MISC.CIVIL APPLICATION NO. 777 OF 2015

IN

STAMP NUMBER MAIN NO. 1723 OF 2015

SHRI.PRAKASH RAMNATH NAIK
MADKAIKAR AND ANR.,

... Applicants

Versus

SHRI.RAMNATH RAGHU GAONKAR.

... Respondent

Mr. Anthony D'Silva, Advocate for the applicants.
Mr. C. A. Coutinho, Advocate for the respondent.

Coram:- F. M. REIS, J.

Date:- 29th July, 2016

P.C.

Heard Mr. A. D'Silva, learned counsel appearing for the applicants and Mr. C. A. Coutinho, learned counsel appearing for the respondent.

2. This is an application for condonation of delay to file a Second Appeal. It is pointed out that the judgment of the Lower Appellate Court was passed on 30.09.2013 and that the applicants sought Legal Aid by approaching the Legal Services Authority within the prescribed time. It is further pointed out that on account of sickness of her husband, the applicant could not follow up the matter and ultimately after an Advocate was appointed under the Legal Aid, the above appeal came to be filed.

3. Mr. C. A. Coutinho, learned counsel appearing for the respondent has filed a reply opposing the condonation of such delay. It is pointed out that the allegations in the application are very vague and do not deserve any consideration. There is no proper explanation for such inordinate delay and as such the application deserves to be rejected.

4. I have considered the submissions of the learned counsel and I have also gone through the records. The fact that the applicant had approached for Legal Aid within the time prescribed has not been disputed by the respondent in the reply. This itself suggest that appropriate steps were taken by the applicant to prefer an appeal to challenge the judgment of the learned Lower Appellate Court within the time prescribed. No doubt, thereafter there was an inordinate delay in following up the matter and ultimately filing a Second Appeal. But however, there is a plausible explanation in the application that the husband of the applicant was sick. In such circumstances, as it is now well settled that while deciding an application for condonation of delay, a justice oriented approach has to be followed by the Court. There is no presumption that any party deliberately approaches the Court with delay unless there are malafides attributed to such party. In the present case, no such malafides are attributed to the applicants. In such circumstances, in the peculiar facts and circumstances of the case, considering the

condition of the applicant who has sought Legal Aid from the Legal Services Authority, I find that the delay deserves to be condoned. Access to justice in the circumstances is a fundamental right of a citizen and as such refusing to condone the delay would lead to depriving the applicants from access to justice. Hence, the delay stands condoned. The application stands disposed of accordingly.

F. M. REIS, J.

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