

IN THE HIGH COURT OF BOMBAY AT GOA.

SECOND APPEAL NO. 43 OF 2015.

SHREE GAJANT LAXMI
DEVASTHAN, THR. ITS
PRESIDENT MR. MANIKPRABHU
D. KAREKAR.

.....Appellant.

V/S
SHRI HARI SHET
NARVENKAR (SINCE
DECEASED) AND ANR.,

.....Respondents.

Mr. P. Lotlikar, Advocate for the appellant.

Mr. G. Agni, Advocate for the respondent nos. 2A and 2B.

Coram:- K. L. WADANE,J.

Reserved on: 27th November, 2015.

Pronounced on:7th January, 2016.

ORDER

This Second Appeal is filed by the appellant/original plaintiff against the judgment and order passed by the Ad-Hoc District Judge-I, FTC North Goa, Panaji in Civil Miscellaneous Application No. 20/2012 dated 26.2.2014 by which application for condonation of delay is dismissed.

2. Parties are referred to as per the original status.

3. The brief facts of the case may be stated as follows:-

The plaintiff filed a suit bearing Regular Civil Suit no.137/1995/A for recovery of possession and permanent

injunction which was dismissed on 25.9.2008. The plaintiff preferred an Regular Civil Appeal along with application for condonation of delay bearing CMA No.20/2012 which is also dismissed. Hence, the present Second Appeal.

4. According to the plaintiff, there was delay of 1170 days in filing the appeal. The plaintiff states that at the time of passing of the judgment and decree, the affairs of the plaintiff Devasthan were looked after by the committee headed by the then president Mr. Karekar and the impugned judgment and decree was not brought to the notice of the other members of the Devasthan Committee. As such, no steps were taken to challenge the same at the relevant time. It is further stated that new committee took charge on 31.10.2010 and the president of the new committee on 14.9.2011 came to know from the earlier President, Shri Baburao M. Karekar about the dismissal of the suit and no appeal was filed against the same. According to the plaintiff, only after 14.9.2011 the new committee decided to take legal recourse against the impugned Judgment and Decree dated 25.9.2008. Hence, steps were taken to obtain certified copy. The application for certified copy was given on 26.9.2011. The same was ready on 4.10.2011 and was collected on 5.10.2011. It is further stated that since the file was not traceable, the plaintiff applied for certified copies of all the relevant documents from the Court on 26.9.2011 and after

seeking legal advice, it was decided to prefer appeal.

5. Delay of 1170 days is sought to be condoned mainly on the ground that earlier president Mr. Karekar due to his old age missed the track of the suit in pursuing with the suit. Secondly, on the ground that the earlier president did not disclosed the decision of the suit to other members. The president of the newly elected committee took charge on 31.10.2010 subsequently the president of present committee came to know about the decision of the suit from the earlier president only on 14.9.2011. So according to the plaintiff the delay is sought to be condoned on the above mentioned circumstances and grounds.

6. The defendants have denied almost all the contents of the appeal. Delay caused in filing the appeal is due to causal approach of the Devasthan committee and its members and they were not diligent in prosecuting the matter. Earlier president Mr. Karekar was very much involved in the affairs of the Devasthan even after the dismissal of the suit. Therefore, the statement that he lost the track of the matter cannot be believed. Further it is contended that members of the managing committee holds meeting on every Amavasya and they used to meet once every Sunday. Therefore, it is improbable to say that the issue of the suit was never discussed for last three years.

The disputed structure is located along the approach road which is merely at a distance of 5 to 10 metres from the temple premises and it is visible to the naked eye and to every passerby. Therefore, the committee members who visit the temple for every occasion could see the suit structure every time they go to the temple or pass by it and also the committee members park their vehicles in front of the disputed structure. Hence, it cannot be believed that the members of committee lost track of the matter.

7. I have heard the arguments of Mr. P. Lotlikar, learned Advocate appearing for the appellant and Mr. G. Agni, learned Advocate appearing for the respondent nos. 2A and 2B.

8. Looking to the grounds mentioned in the appeal memo and the arguments advanced on behalf of the plaintiff, it appears that the then president has lost the track of the suit and he has not disclosed the decision of the suit to its members. The very first ground appears to be unbelievable simply because president and members of the committee used to hold monthly meeting and decision of the suit has not been discussed in the meeting. Such ground is not believable simply because dismissal of the suit is an important aspect in regard to the Devasthan committee, it pertains to immovable property situated just in front of the temple premises. Therefore, first

ground stated in the petition is not acceptable.

9. Second ground is that the president of the new committee took charge on 31.10.2010 and new president came to know about the decision of the suit on 14.9.2011 i.e. from the earlier president Mr. Karekar. This ground is also not believable because knowledge of the decision is stated to be after one year from the date after the new committee took the charge. During the period of one year no decision was brought to the notice of the president or committee is not believable because in the monthly meeting subject had to be discussed. I do not think that this is negligible subject which is to be ignored for years together. The grounds stated in the petition are not convincing or reasonable ground for which a delay can be condoned.

10. Mr. Lotlikar relied upon the following authorities:-

- i. Sonerao Sadashivrao Patil Vs. Godwaribai Laxmansingh Gahirewar, AIR 1999 Bombay 235
- ii. Baburao Mahadeorao Bhusari and ors. Vs. Nitin Gopalrao Pethe and ors. 2015(5) ALL MR 811.
- iii. Maniben Devraj Shah Vs. Municipal Corporation of Brihan Mumbai in Civil Appeal Nos. 2970-2971 of 2012.
- iv. Maniben Devraj Shah Vs. Municipal Corporation of Brihan Mumbai, AIR 2012 SC 1629

- v. Improvement Trust, Ludhiana Vs. Ujagar Singh and ors.,(2010)6 SCC 786.
- vi. Esha Bhattacharjee Vs Managing Committee of Raghunathpur Nafar Academy (2013) 12 Supreme Court Cases, 649.

11. As against this, Mr. G.Agni, learned counsel has relied upon the observation in the case of Esha Bhattacharjee Vs Managing Committee of Raghunathpur Nafar Academy (2013) 12 Supreme Court Cases, 649.

12. In the above case, the Hon'ble Supreme Court by considering their earlier decisions in nearly about 24 reported cases cited have culled out broad principles as follows:-

- “i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.
- ii) The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.
- iii) Substantial justice being paramount and pivotal

the technical considerations should not be given undue and uncalled for emphasis.

- iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.
- v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.
- vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.
- vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.
- viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.
- ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the

scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

- x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.
- xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.
- xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.
- xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

To the aforesaid principles we may add some more guidelines taking note of the present day scenario.

They are: -

- a) An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the

principle that adjudication of a lis on merits is seminal to justice dispensation system.

- b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.
- c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.
- d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a non-challan manner requires to be curbed, of course, within legal parameters."

13. Looking to the above broad principles, the Hon'ble Supreme Court has taken into consideration the factors to be considered from both the sides. Here in the present case, there is inordinate delay in filing the appeal. The grounds mentioned for condonation of delay are not convincing or there is no sufficient cause to condone the delay. The delay of short duration or few days can be considered liberally but same cannot be the case with a long and inordinate delay and that too unexplained. Here in present case, delay is not properly explained nor there was sufficient cause for non-filing of the

appeal. Conduct and behaviour of the plaintiff in their inaction or negligence are relevant factors which are to be taken into consideration. It is so as the fundamental principle is that Courts are required to weigh the scale of balance of justice in respect of both the parties and said principle cannot be given go by in the manner of liberal approach.

14. The facts/grounds stated by the plaintiff has not been supported or substantiated by earlier president by filing an affidavit, therefore, bear words of the plaintiff regarding inordinate delay cannot be believed. Looking to the facts and circumstances of the case, I do not think that there is substantial question of law for which Second Appeal is to be admitted. Consequently, Second Appeal stands dismissed.

K. L. WADANE, J.

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