

IN THE HIGH COURT OF BOMBAY AT GOA

MISC.CIVIL APPLICATION NO. 561 OF 2016

IN

STAMP NUMBER MAIN NO. 1868 OF 2016

THE EXECUTIVE ENGINEER, WORKS
DIVISION VI (NH), PWD.

... Applicant

Versus

MRS. CASILDA FERNANDES (DEC) THR.
LRS.

... Respondent

Ms. Neha Kholkar, Additional Government Advocate for the
Applicant.

Shri Carlos Alvares Ferreira, Advocate for the Respondents.

Coram:-C. V. BHADANG, J.

Date:- 8th December, 2016

P.C:

Heard the learned Additional Government Advocate for
the applicant and Shri Ferreira, the learned Counsel for the
respondents.

2. There is a delay of 112 days in filing an appeal.

3. It is contended on behalf of the applicant that some time
was spent in obtaining the approval of the competent
Authority, before the application could be filed, which has
resulted into the delay, which is neither intentional nor
exhibits any negligence.

4. On the contrary, Shri Ferreira, the learned Counsel for the respondents has strenuously urged that as per the dates set out by the applicant, the decision for filing an appeal was taken on or about 18.01.2016 and the impugned judgment having been passed on 02.11.2015, there was enough time to file the appeal within the statutory period of 90 days. It is pointed out that there is no provision or procedure pointed out to send the appeal and/or the application for condonation of delay for approval, once a decision to file appeal is taken.

5. The learned Additional Government Advocate has pointed out that the applicant has taken prompt steps in as much as the certified copy was applied on the very next day of passing of the judgment i.e. on 03.11.2015 and the certified copy was received on 23.11.2015. It is pointed out that the file went to the Chief Engineer (PWD) and thereafter to the Law Department, where the Under Secretary approved the proposal on 18.01.2016. It is however pointed out that the file was received in the office of the learned Advocate General on 02.03.2016, after which the appeal was drafted and got approved on 12.05.2016.

6. I have carefully considered the rival circumstances and the submissions made. Although the Government as an entity cannot claim special privilege in the matter of

condonation of delay, the Hon'ble Apex Court in the case of ESHA BHATTACHARJEE Vs. MANAGING COMMITTEE OF RAGHUNATHPUR NAGAR ACADEMY, (2013) 12 SCC 646, has held that a reasonable allowance can be made in the favour of a public body (para 21.13). Further it is held that where there is no inordinate delay, a liberal view can be taken (para 21.8). Considering the overall circumstances, I find that the delay deserves to be condoned.

7. In the result, the application is allowed. The delay in filing the appeal is condoned. Let the appeal be registered.

C. V. BHADANG, J.

EV