

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 255 OF 2016

MR. ARCANJO DOMINGOS D'SILVA AND
ANR.,

... Petitioners

Versus

MR. JOHN SOARES AND 2 ORS.,

... Respondents

Adv. Arun De Sa for the Petitioners.

Adv. R. Gawas for the Respondents.

Coram:- C. V. BHADANG, J.

Date:- 20th June, 2016

P.C.:

Heard the learned counsel for the petitioners and the learned counsel for the respondents.

2. By this petition, the petitioners are challenging the order dated 20/4/2015 passed by the learned District Judge, South Goa, Margao dismissing C.M.A No.26/2014 and thereby refusing to condone the delay of 1184 days in filing the appeal.

3. The brief facts are that the petitioners had filed Regular Civil Suit No.187/2014 against the respondents. According to the petitioners, they were represented before the trial Court by Advocate Mr. J. Martins. The petitioners used to attend the hearings of the suit whenever they were required to do so by the advocate. It was contended that normally the petitioner no.1 used to attend the

hearing, however due to his deteriorating health he was finding it difficult to attend the court and this was so informed to their advocate. It was contended that the petitioner last attended the court on 4/2/2011. The petitioner no.1 obtained the next date of hearing but was not aware as to for what the matter was fixed. The petitioner no.1 informed the next date to his advocate, who told the petitioner no.1 that his presence is not required in the Court and the advocate also informed the petitioner no.1 that he will be informed whenever his presence is required.

4. It was contended that thereafter there was no communication. It was contended that thereafter there was any communication from the advocate. It was contended that the petitioner no.1 on account of his ill health was not moving about, while the petitioner no.2, who is the wife of petitioner no.1, rarely came to Margao, as she was required to look after petitioner no.1. Ultimately as no communication was received from the counsel, the petitioner no.2 approached the advocate on 20/6/2014 to inquire about the matter when it was learnt that the suit was dismissed on 23/2/2011. It was contended that the counsel handed over the certified copies of the judgment and decree, asking them to file an appeal. The counsel also informed that henceforth he will not be appearing for them as the petitioner had failed to contact him earlier. The petitioner contacted another advocate on 21/6/2014 and eventually the appeal along with the application for condonation of delay was filed on 23/6/2015.

5. The application for condonation of delay was opposed by the respondents. It was denied that the petitioners were not moving out from the house. It was contended that they were frequently seen at Margao.

6. The learned District Judge by the impugned order dated 20/4/2013 found that the certified copy was applied for on the date of the judgment i.e on 23/2/2011 and it was collected on 4/3/2011. The learned District Judge further found that the medical certificate dated 12/2/2015 issued by Dr. Umesh Panandikar, showed that the petitioner no.1 was under his treatment from March 2011 for cerebral concussion. The learned District Judge found that the said medical certificate to be "patently unbelievable and tailor made that it does no credit to the medical profession". It was also found that the certificate was not produced along with the application for condonation of delay. It was further found that the petitioner had not explained whether the certified copy was applied by the advocate or the petitioners. The affidavit of the concerned advocate was not filed in support of the application. For all these reasons the learned District Judge has found that the petitioners had failed to show sufficient cause in not filing the appeal within time and in that view of the matter the application came to be dismissed.

7. It is submitted by the learned counsel for the petitioner that the

petitioner no.1 had suffered an accident in the year 2006 and was incapacitated on account of the same. It is submitted that the petitioner no.2 being the wife of the petitioner no.1 could not move about as she was required to look after her husband. It is submitted that in such circumstances and considering the medical certificate, the delay ought to have been condoned.

8. On the contrary the learned counsel for the respondent has supported the impugned order. It is submitted that there is a gross delay in filing the petition, which is not properly explained.

9. I have carefully considered the rival circumstances and the submission made. Although the petitioner has referred to the various medical case papers produced on record to show that the petitioner no.1 had suffered an accident in the year 2006, admittedly, the petitioner no.1 was attending the proceedings of the suit till 4/2/2011. If that be so, it cannot be accepted that the petitioner could not have attended the proceedings in the suit on account of the injury sustained in the accident in the year 2006. Even after February 2011, assuming that the counsel had informed the petitioners that they will be informed if their presence is necessary, the petitioners did not take any steps to contact the advocate or to seek information about the suit till 20/6/2014 i.e. for more than 2 years. This would clearly show negligence and absence of diligence on the part of the petitioner. It is trite that although a liberal view has to be taken in the

matter of condonation of delay where the delay may be of a small duration and properly explained, but the same would not apply in a case of a substantial and gross delay of 1184 days and where there is no proper explanation forthcoming.(See judgment in the case of ESHA BHATTACHARJEE VS. MANAGING COMMITTEE OF RAGHUNATHPUR NAFAR ACADEMY & OTHERS, reported in (2013) 12 SCC 649.

10. I have carefully gone through the order passed by the learned District Judge and I do not find that it exhibits any jurisdictional error so as to warrant interference. In the result the writ petition is dismissed with no order as to costs.

C. V. BHADANG, J.

ap/-