

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 779 OF 2016

SMT. ESPERACA DA COSTA (DEC) THR.
HER LEGAL HEIRS.

... Petitioner

Versus

PAULINA RODRIGUES AND 2 ORS.

... Respondents

Shri G. Teles, Advocate for the petitioner.

Shri. V. Menezes, Advocate for the respondent no.1.

Coram:- F. M. REIS, J.

Date:- 15th November, 2016

P.C.

Heard G. Teles, learned Counsel appearing for the petitioner and
Shri V. Menezes, learned Counsel appearing for the respondent no.1.

2. The petitioner challenges an order passed by the learned District Judge, whereby an application for condonation of delay filed by the respondents came to be allowed.

3. Mr. Teles, learned Counsel appearing for the petitioner has vehemently pointed out that though the appeal was preferred in the year 2010, an application for condonation of delay was filed in the year 2016 and such inordinance delay has not been explained by the respondents in such application. The learned Counsel further points out that respondents are not parties before the tenancy proceedings and as such, unless and until the application filed by the respondents for leave to appeal is decided, the question of considering the application for condonation of delay would not arise. The learned Counsel further points out that the delay sought to be condoned is for

a period of 6 years when according to him, the delay had to be explained upto the year 2016 when the application was filed. The learned Counsel further points out that the petitioner had relied upon the judgment in support of his contentions that the respondents are not entitled for leave to challenge the judgment of the tenancy Court and as such, unless and until such application was decided the question of considering the application for condonation of delay would not at all be justified. It is also submitted that there is a jurisdictional error committed by the learned Judge while passing the impugned order which calls for interference of this Court in the present Writ Petition.

4. On the other hand Shri V. Menezes, learned Counsel appearing for the respondent no.1 has taken me through the averments in the appeal memo to point out specific averments pleaded to show the circumstances in which the respondents had to file an appeal before the Appellate Forum. The learned Counsel further points out that admittedly the appeal was filed in the year 2010 and as the motion to challenge the order was already initiated in the year 2010. The learned Counsel further submits that respondents had to justify the delay only upto the year 2010. The learned Counsel further pointed out that though averments were found in the appeal memo nevertheless for abandoned caution the application for condonation of delay was filed in the year 2016 clearly mentioning the circumstances in which the delay had occasioned in filing such application. The learned Counsel further pointed out that the

respondents had no knowledge of the impugned order in the tenancy proceedings and as such the learned Appellate Court was justified to condone the delay. The learned Counsel further points out that as far as the contention of the petitioner that the respondents are not entitled for leave to challenge the order of the Tenancy Court, such application has not been decided and, as such, the question of considering such submission in the present Writ petition is not at all justified.

5. I have duly considering the submissions of the learned Counsel and I have also gone through the record.

6. An order passed allowing an application for condonation of delay is within the discretion of the Lower Appellate Court on being satisfied of sufficient cause for such delay. In the present case, the learned Judge upon appreciation of materials on record has exercised its discretion in condoning the delay. The only aspect to be considered is whether there is an material irregularities touching the jurisdiction while exercising such discretion in favour of the respondents. The fact that the respondents were not parties to the proceedings before the tenancy Court are not disputed. It is undisputed that there is no specific averments in the reply filed by the respondents to the fact that the respondents had knowledge of the tenancy order before filing of the appeal in 2010.

7. In such circumstances as there is no positive averments nor material produced that the respondent had knowledge of the impugned order much before filing of the appeal, it cannot be said

that the learned Judge had erroneously exercised jurisdiction while condoning the delay which would call for interference of this Court in the present Writ Petition under Article 227 of the Constitution of India. The learned Judge has infact exercised discretion to advance the case of justice and, as such, there is no justification for this Court to interfere in the present Petition.

8. As far as the contention of the Shri Teles, learned Counsel for the petitioner that the application for leave to appeal had to be examined before the disposal of the application for condonation of delay though this procedure was otherwise be appropriate nevertheless this by itself does not vitiate the impugned order disposing of the application for condonation of delay.

9. Considering that the application for leave to file appeal is still pending for consideration before the Appellate Court, keeping all the contentions of the petitioner on that count open, I find that there is no jurisdictional error committed by the learned Judge while passing the order impugned which would call for inference of this Court as there is no failure of justice in case the impugned order is allowed to stand.

10. Needless to say that the learned Judge would consider the application for leave to appeal after hearing the parties in accordance with law. Subject to the above petition stands rejected.

F. M. REIS, J.