

IN THE HIGH COURT OF BOMBAY AT GOA

MISC.CIVIL APPLICATION NO. 829 OF 2014

IN

STAMP NUMBER MAIN NO. 2572 OF 2014

VIDA CALMA HOMES PVT. LTD. REP ITS
MANAGING DIRECTOR MR. ROY PATRAO.

... Applicant

Versus

MRS. LYRA C. VAIDYA NEE RODRIGUES
AND 4 ORS.

... Respondent

Mr. Ashwin D. Bhobe, Advocate for the Applicant.
Mr. V. Braganza, Advocate for Respondent No.1.

Coram:- F. M. REIS, J.

Date:- 29th January, 2016

P.C.:

Heard Mr. A.D. Bhobe, the learned Counsel appearing for the applicant and Mr. V. Braganza, the learned Counsel appearing for the respondent no.1.

2. This is an application for condonation of delay in filing the First Appeal.

3. Mr. A.D. Bhobe, the learned Counsel appearing for the applicant points out that the impugned judgment was passed on 26/03/2013, whereby the suit filed by the respondent was decreed. It is further submitted that immediately thereafter within the time prescribed a Civil Misc. Application No.17/2013 was filed for review of the said

judgment which came to be disposed of on 20/06/2014. It is further submitted that the applicant had stated on oath that he was advised that the appeal has to be filed within 90 days from the date of the disposal of the review petition. It is further submitted that within such period the applicants contacted the Counsel to file an appeal before this Court and, ultimately, filed such appeal within 90 days from the date of the disposal of the review petition along with an application for condonation of delay.

4. The respondent no.1 has opposed the said application. It is pointed out that the applicant has been negligent in pursuing his remedy in filing the appeal. It is further pointed out that though the review petition came to be disposed of on 20/06/2014, the applicant chose to contact the lawyer in Panjim only in the last week of September, 2014, which itself shows gross negligence and carelessness on the part of the applicant. It is further submitted that on account of such delay, rights have accrued to the respondents.

5. I have considered the submissions of the learned Counsel and I have also gone through the records. The fact that the applicant has initiated a remedy on legal advice to challenge the impugned judgment passed by the learned Civil Judge Senior Division at Mapusa by filing a review petition is not in dispute. The fact that such review petition came to be disposed of only in June, 2014 is also not disputed. The applicant has stated on oath that he was advised

that the period of limitation was 90 days from the date of passing of such order on review. The respondent no.1 has disputed the said averment in the affidavit, but however, there is no positive material produced by the respondent no.1 to disclose that the applicant has deliberately not filed the appeal within the time prescribed or that any benefit has been taken by the applicant by filing such appeal belatedly. As such, there are no malafides attributed to the applicant in approaching this Court belatedly. But, however, the records clearly reveal that there was some inaction on the part of the applicant in pursuing their remedy promptly. No doubt, such lapse on the part of the applicant would not by itself accrue any rights to the respondent as contended by the learned Counsel appearing for the respondent no.1. It is well settled that the Court should take a justice oriented approach whilst considering an application for condonation of delay. Hence, in such circumstances, the inconvenience caused to the respondent no.1 on account of such lapse by the applicant can be compensated by awarding costs. In such circumstances, I find that the delay can be condoned subject to the payment of costs by the applicant to the respondent no.1 which are quantified at Rs.10,000/- as condition precedent.

6. In view of the above, I pass the following order:

O R D E R

(i) The delay in filing the appeal stands condoned subject to the applicant paying costs of Rs.10,000/- to the respondent as condition precedent.

7. Application stands disposed of.

F. M. REIS, J.

NH