

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 919 OF 2016

1. Shri Shekar Reddy,
48 years of age,
Son of Kanna Reddy,
Driver, and his wife,
2. Smt. Shelvi S. Reddy
Age about 41 years
Wife of Shri Shekar Reddy,
Labour, married, Both
Resident of Plot no. 51,
Pratap Nagar, Pilliem,
Dharbandora, South Goa.

..... Petitioners

V e r s u s

The Mamlatdar of Dharbandora,
Office of the Mamlatdar,
Dharbandora, South Goa.

..... Respondent

Mr. A. D. Bhobe and Ms. Shraddha Bhobe, Advocates for the Petitioners

Mr. V. Sardessai, Addl. Government Advocate for the Respondent.

Coram :- **F. M. REIS, J**

Date : **21st December, 2016**

ORAL JUDGMENT

Heard Mr. A. D. Bhobe, learned Counsel appearing for the Petitioners
and Mr. V. Sardessai, learned Addl. Government Advocate appearing for the
Respondent.

2. Rule. Heard forthwith with the consent of the learned Counsel.
Learned Addl. Government Advocate appearing for the Respondent, waives

service.

3. The challenge in the above Petition is to an Order dated 17.08.2016 whereby an application filed by the Petitioners for restoration of the Appeal preferred by the Petitioners came to be dismissed.

4. Shri A. D. Bhole, learned Counsel appearing for the Petitioners, submits that the Petitioners had preferred an Appeal challenging an Order passed by the learned Deputy Collector dated 28.08.2013 which came to be dismissed for default on 16.10.2014. It is further pointed out that somewhere in April 2016, the Petitioners received a notice from the Respondents to vacate the suit premises when the Petitioners learnt about the dismissal of the Appeal for default. It is further pointed out that the Petitioners immediately contacted their Lawyer who gave a NOC to the petitioners to take steps in the matter on 16.04.2016. The learned Counsel further pointed out that the application for restoration was filed on 26.04.2016. The learned Counsel further pointed out that the Petitioners after perusing the records, learnt that prior to the subject dismissal, on four occasions, the Advocate for the Petitioners had not appeared and ultimately the learned Judge proceeded to dismiss the Appeal on 16.10.2014 in view of the absence of the Petitioners. It is further submitted that the Petitioners are Villagers residing in the far off Villages in Goa at Dharbandora and, as such, they had full faith that the concerned Advocate would look after the interest of the Petitioners and only after the receipt of the notice from the State Government, the Petitioners learnt of the negligence on the part of the concerned Advocate in not appearing before the

Court. Learned Counsel further submits that the averments in the application were not disputed as no reply was filed to such application. Learned Counsel further pointed that the delay was not deliberate and, in any event, there was no reason to file the application for restoration belatedly as, according to him, grave injustice would occasion to the Petitioners as they would be deprived of their residential house in case the impugned Order is allowed to stand. Learned Counsel further submits that the Petitioners have a good case on merits and accordingly an opportunity be given to the Petitioners to put up their case before the learned Judge. Learned Counsel has thereafter taken me through the impugned Order passed by the learned Tribunal to point out that the learned Judge has failed to consider that the Petitioners have made out a sufficient cause for restoration of the Appeal.

5. On the other hand, Shri V. Sardessai, learned Addl. Government Advocate appearing for the Respondents, has pointed out that a notice was issued to the Petitioners somewhere on 13.04.2015 calling upon them to vacate the subject premises as the Appeal was dismissed. Learned Counsel further pointed out that the application itself was filed in April 2016 more than one year after the said notice. Learned Counsel further submits that considering the gross delay and negligence on the part of the Petitioners in proceeding with their remedy, there is no justifiable grounds to interfere in the impugned order.

6. I have carefully considered the submissions of the learned Counsel and I have also gone through the records. It is now well settled that whilst deciding

an application for condonation of delay, the Court should take a justice oriented approach. In the present case, no doubt, there is a delay in filing an application for restoration of the Appeal. But, however, the uncontroverted facts in the application disclose that the Petitioners are residing at Dharbandora are uneducated and in fact had engaged a Lawyer to look after the case before the learned Tribunal. The fact that the concerned Lawyer had not appeared before the learned Tribunal was not to the knowledge of the Petitioners herein. Apart from that, though the Appeal was dismissed for default on 16.04.2014, there is nothing on record to show why the Respondents proceeded to take effective action against the Petitioners only in April 2016. Though the learned Addl. Government Advocate pointed out that a notice was issued to the Petitioners in April 2015, nevertheless, there is no material produced on record to show that in fact the Petitioners were served with such notice. As already pointed out herein above, the contents of the application stand uncontroverted as the Respondents chose not to file any reply for such application.

7. Apart from that, there is nothing on record to show that it was mischievous attempt by the Petitioner by allow the Petition to be dismissed for default and filing an application for restoration thereof belatedly. There are no malafides attributed to the Petitioners. In any case, allowing the impugned Order to stand would result in grave injustice to the Petitioners as it is pointed out by Shri A. D. Bhole, learned Counsel appearing for the Petitioners, that the Petitioners would be deprived to their residential house which they have been residing all these years.

8. In the peculiar facts and circumstances of the case and, in the interest of justice, considering that the averments in the application stand uncontroverted and as negligence is attributed to the concerned Advocate for his failure to attend and inform the Petitioners of the progress of the Appeal, I find that an opportunity could be given to the Petitioners to decide the Appeal preferred by the Petitioners on merits after hearing the parties in accordance with law. No doubt, this exercise would have to be permitted on payment of costs to the Respondents which are quantified at Rs.5,000/- as condition precedent. The learned Tribunal whilst passing the impugned Order no doubt has taken a view that the Petitioners have failed to make out a sufficient cause for restoration but, however, the fact that the party should not suffer on account of the negligence of the Advocate, cannot be forgotten whilst examining such aspect.

9. In such circumstances and in the interest of justice, I find that the impugned Order passed by the learned Tribunal dated 17.08.2016 deserves to be quashed and set aside and the application filed by the Petitioners be allowed subject to payment of costs of Rs.5,000/- as condition precedent payable to the Goa Stage Legal Services Authority.

10. Rule is made absolute in the above terms.

F .M. REIS, J.

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