

IN THE HIGH COURT OF BOMBAY AT GOA

MISC.CIVIL APPLICATION NO. 271 OF 2016

IN

STAMP NUMBER MAIN NO. 3725 OF 2015

SHRI LAXIMAN SAVALKAR (SINCE
DECEASED), THROUGH HIS LRS.,

... Applicant

Versus

FABRICA THE CHURCH OF ST. ANDREW,
THROUGH PRESIDENT.

... Respondent

Mr. Gaurish N. Agni, Advocate for the applicants.

Mr. Ryan Da Piedade Menezes and Ms. C. Rebello, Advocate for the
respondent.

Coram:- F. M. REIS, J.

Date:- 19th August, 2016

P.C.:

Reply filed on behalf of the respondents.

2. Heard Mr. G. Agni, learned Counsel appearing for the
applicants and Mr. Ryan Menezes, learned Counsel appearing for the
respondent.

3. This is an application for condonation of delay of 10 months
and 10 days in preferring the second appeal. It is the case of the
applicants that after the decree was passed, the learned Counsel
appearing on their behalf obtained a certified copy, though had not
informed the applicants that the appeal preferred by the applicants
came to be rejected. It is further pointed out that somewhere in the
month of August, 2015 they collected the copy of the decree and

thereafter reconstituted the file to enable them to file the present appeal. It is further pointed out that as they were not informed by the Advocate about the disposal of the appeal, there was delay in preferring such appeal.

4. Mr. R. Menezes, learned Counsel appearing for the respondent has strongly opposed the condonation of such delay as, according to him, there is no sufficient cause shown by the applicants to condone such delay. It is also pointed out that there is total inaction on the part of the applicants from April, 2015 to August, 2015. As such, the application be rejected.

5. Mr. Agni, learned Counsel appearing for the applicants has pointed out that the delay was essentially on account of non-communication of the outcome of the appeal preferred by the applicants, by the learned Advocate appearing on their behalf. The learned Counsel further points out that after they got hold of the Decree passed by the Appellate Court, there was further delay to reconstitute the file, as the Advocates were on vacation during the months of May and June of the subject year.

6. Mr. Menezes, learned Counsel appearing for the respondent points out that there is no justification shown to condone any delay as there was total inaction on the part of the applicants and, as such, the application deserves to be rejected.

7. I have considered the submissions of the learned Counsel. I have also gone through the records. The averments made on affidavit state that the Advocate appearing for the applicants had not informed about the outcome of the appeal. No doubt, every default on the part of the Advocate may not necessarily enure to the benefit of a party to make out a case of sufficient cause to condone the delay, but, however, it is now well settled that the Court has to adopt a justice oriented approach while examining an application for condonation of delay. There are no any malafides attributed to the applicants in the reply filed by the respondents, nor any averment that any advantage has accrued to the applicants by filing the appeal belatedly. Apart from that, parties should not suffer due to the lapses of the Advocates.

8. In the facts and circumstance of the case and in the interest of justice, I find that the delay deserves to be condoned, subject to the applicants paying costs of Rs.10,000/- to the respondent, as condition precedent, within one week from today.

9. The application stands disposed of accordingly.

F. M. REIS, J.

ssm.