

IN THE HIGH COURT OF BOMBAY AT GOA

MISC.CIVIL APPLICATION NO. 210 OF 2016

IN

STAMP NUMBER MAIN NO. 3737 OF 2015

SHRI IQBAL HASSAN SAB NADAF.

... Applicant

Versus

STATE OF GOA, THROUGH ITS CHIEF
SECRETARY AND 3 ORS.,

... Respondents

Mr. Anthony Joe D'Silva, Advocate for the applicant.

Ms. Susan Linhares, Additional Govt. Advocate for the respondents
No.1 & 2.

Coram:- F. M. REIS, J.

Date:- 24th June, 2016

P.C.:

Heard Shri D'Silva, learned Counsel appearing for the applicant and Ms. S. Linhares, learned Additional Govt. Advocate for the respondents No.1 and 2.

2. This is an application for condonation of delay in filing a first appeal. It is the contention of the applicant that the learned Trial Judge, by Common Order dated 29/9/2012, had rejected the plaint filed by the plaintiffs, including that of the applicant herein. It is further pointed out that 22 appeals were filed by such plaintiffs, but, however, three parties failed to prefer such appeal as they were under the impression that they had filed appeals. It is further pointed out that in such appeals, a statement was recorded of the learned

Additional Govt. Advocate that no action would be taken based on the impugned order. But, however, when the Government Authorities proceeded to take action against the applicant, he realised that no appeal was filed on behalf of the applicant and, consequently, steps to prefer such appeal along with the application for condonation of delay were initiated. It is further pointed out that the applicant was sick and consequently, could not contact the concerned Advocate to prefer an appeal.

3. The respondents have filed their reply, opposing the application for condonation of delay, inter alia, contending that the gross delay has not been satisfactorily explained.

4. I have considered the submissions of the learned Counsel and I have also gone through the Judgments relied upon by the learned Counsel appearing for the applicant and the respondents. It is not in dispute that the impugned Order has disposed of 25 suits wherein the plaintiffs in 22 matters have preferred appeals which have been admitted and are pending consideration. As such, I find that though there is gross delay in filing the present appeal, nevertheless, the explanation by the applicant in the application is plausible in the facts and circumstances of the case. There is no reason for the applicant not to challenge the impugned order passed by the learned Trial Judge when the other applicants in the companion matters had already preferred an appeal before this Court. There are no

malafides attributed to the applicant in the reply filed by the respondents.

5. Considering the facts and circumstances of the case, the application for condonation of delay deserves to be granted, subject to payment of costs payable to the respondent No.4 herein. The costs are quantified at Rs.5,000/-.

6. Hence, for the aforesaid reasons and in the interest of justice, the delay in filing the appeal stands condoned, subject to the applicant paying costs of Rs.5,000/- to the respondent No.4 herein as condition precedent.

7. The application stands disposed of accordingly.

F. M. REIS, J.

ssm.