

IN THE HIGH COURT OF BOMBAY AT GOA

MISC.CIVIL APPLICATION NO. 301 OF 2016

IN

STAMP NUMBER (APPLN.) NO. 3799 OF 2015

SMT. JOANITA VIEGAS.

... Applicant

Versus

SHRI. UDAY BABANI PHALDESSAI AND
ANR.,

... Respondents

Shri S.Redkar, Advocate for the applicant.

Shri E.Afonso, Advocate for the respondent no.1.

Coram:- NUTAN D. SARDESSAI, J.

Date:- 15th September, 2016

P.C.

1. Shri S. Redkar, learned Advocate for the applicant submits that there is an error in the number of days in appeal and seeks leave to carry out the necessary corrections. Shri Afonso, learned Advocate for the respondent no.1 has no objection to the said amendment. The applicant to carry out the same forthwith.

2. Shri S. Redkar, learned Advocate for the applicant took me through the application spelling out the grounds which resulted in the dismissal of the appeal and on account of non-appearance of the then Advocate on record for the applicant. Shri E. Afonso, learned Advocate on behalf of the respondent no.1 opposed the application on the premise that nothing should have prevented the Advocate to pursue the matter even assuming that he was appointed as a President of the District Consumer Redressal Forum, North Goa.

3. I have perused the records from which it is apparent that on one occasion the Advocate on record was represented by the Advocate holding for him at his instance and thereafter there was no appearance on behalf of the applicant. This Court had granted an opportunity despite the non-appearance. Nonetheless this Court finding that none appeared on behalf of the appellant was pleased to dismiss the appeal for want of prosecution on 4.4.2014. The applicant had taken time of 570 days in moving the application for the condonation of delay.

4. It has been urged on behalf of the applicant that during the course of inquiries in November 2015 it was learnt by the present Advocate that the matter had already come on board and was dismissed for non-prosecution on 4.4.2014, informed the Advocate on record accordingly and the then Advocate also contacted the applicant and informed her to move the application for restoration. In any event, it is apparent that the non-appearance of the applicant who was otherwise not required to remain present was occasioned due to the default of the then Advocate on record who did not put in any appearance before the Court. The party who is in the First Appeal cannot suffer the consequences of an act of negligence at the behest of an Advocate appearing at the relevant time. It was otherwise brought to my notice by Shri S. Redkar that the applicant had suffered 7% disability and otherwise has a good case to succeed on merits. Thus, considering all these aspects and that a party should not suffer on account of the inaction and negligence of the Advocate,

i find it appropriate to condone the delay. The application is accordingly allowed and the appeal is restored to file.

NUTAN D. SARDESSAI, J.

mukund