

IN THE HIGH COURT OF BOMBAY AT GOA

Second Appeal No.1 of 2016

Mr. Ubaldo Noronha and another **Appellants.**

Versus

Mr. Nazaret Noronha and another **Respondents.**

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Mr. Ryan Da Piedade Menezes, Advocate for the appellants.

Mr. J. Rodricks, Advocate for the respondents.

CORAM : K.L. WADANE, J.

RESERVED ON :05/02/2016

PRONOUNCED ON :25/02/2016

ORDER

1] Present Second Appeal is preferred by the appellants challenging the order passed by the District Judge-1, South Goa, Margao in Civil Misc. Application No.136/2015 dated 25th November, 2015 along with Final Chart of partition dated 01/12/2010 and the judgment and decree dated 18.12.2010 passed in the Inventory Proceeding No.31/2000 before the Civil Judge, Senior Division, Margao, as also order dated 01.11.2014 passed in Civil Misc. Application No.11/2013.

2] Misc. Civil Application filed by the present appellants for

condonation of delay of 1580 days caused in filing an appeal against the order passed by the trial Court in the Inventory Proceeding. Therefore, the present appellants filed an appeal before the First Appellate Court along with the application for condonation of delay. After hearing both sides, the learned First Appellate Court has dismissed the petition. Hence, the present appeal.

3] The brief facts of the case may be stated as follows:-

That, before the First Appellate Court the present appellants prayed for to condone delay of 1580 days in filing the appeal on the ground of their illness. It is their contention that the Inventory Proceedings were initiated in the Court of Civil Judge, Senior Division, Margao and before culmination of the proceedings, the appellant no.1 fell seriously ill and was continuously visiting hospital since the year 2009. He is highly diabetic. On several occasions, the appellant no.1 had admitted in the hospital. The appellant no.1, due to his sickness, was unable to visit his Lawyer.

4] Some time in the month of May-June 2012 the appellants received a show cause notice in Regular Execution Petition No.17/2012.

At that time, only the appellants realise that the Inventory Proceeding had culminated. Thereafter the appellants had engaged the services of Advocate A. Clovis Da Costa, who after applying for the documents, informed the appellant no.1 that the objections filed by them to the Final Chart of partition was dismissed and as per the Final Chart of partition, the appellants are entitled to an area of only 35 sq. mts. and such area would not serve any convenient purpose. Therefore, it was directed to pay an amount of Rs.10,000/- as owelty money to the appellants.

5] The appellant no.1 is not enjoying good health since the year 2009 and his leg was amputated on 16th May 2011. The appellant no.2 met with an accident and was confined to the house from 28th July 2012. For the above stated reasons/grounds, the appellants pray to condone the delay.

6] I have heard the argument of Mr. Ryan, the learned counsel appearing for the appellants and Mr. Rodricks, the learned counsel appearing for the respondents.

7] During the course of arguments, Mr. Ryan learned counsel

appearing for the appellant has argued that the land admeasuring 315 sq. mts. was the subject matter of the Inventory Proceeding. The learned trial Court has finalised the Final Chart of the partition without taking into consideration the relevant provisions of Article 1387 of Portuguese Civil Procedure Code. So also there was no compliance of provisions of Article 1391 of Portuguese Civil Procedure Code. Such argument of Mr. Ryan is absolutely premature since the learned First Appellate Court has rejected the application for condonation of delay which was filed along with the appeal. Such arguments of Mr. Ryan may be relevant while considering the grounds of appeal. This court is only restricted to decide the application for condonation of delay and whether such delay is reasonably explained or not.

8] I have gone through the reasons recorded by the First Appellate Court and other relevant record. On perusal of the judgment/order passed by the Civil Judge Senior Division, Margao in Execution Petition no.17/2012 dated 2nd March 2015, it appears that the present appellants have served with the notice of the Inventory Proceeding on 18th June, 2012. After several opportunities granted to them, they filed their reply at Ex. 9. So, apparently it appears that the

present appellants have contested the Execution Petition no.17/2012. Therefore, it cannot be said that present appellants were unable to present their appeal within the prescribed period of limitation.

9] It is well settled principle of law is that while dealing with the application for condonation of delay, the Court should not adopt most hyper technical approach. At the same time, it is also equally well established that the delay has to be explained reasonably. The length of delay is immaterial. However, its reasonable explanation is the only criteria to condone the delay. Here, in the present case, the ground on which the appellants pray to condone the delay is about the sickness of appellant no.1. From the reasons recorded by the trial Court, it appears that the appellant no.1 was hospitalised during the period from 15th May 2011 to 18th July 2011 and on 13th August 2011 to 7th September 2011. Thus, from the record it appears that the appellant no.1 was admitted in the hospital for some time. It does not mean that the appellants were unable to obtain certified copies of the judgment and order and to file an appeal particularly when they have represented the Execution Proceeding and they have contested the same. In such circumstances, it was possible for them to present appeal. Here in the present matter,

there is delay of 1580 days, which has not been explained properly.

10] Considering the above circumstances, I do not think that a substantial question of law is involved in the present appeal. Therefore, the appeal is liable to be dismissed at the admission stage. Accordingly, Second Appeal No.1/2016 is dismissed with no order as to costs.

K. L. WADANE, J.

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11] At this stage, learned counsel appearing for the appellants states that the interim relief granted by this Court be continued.

12] For the reasons stated in the order, I do not see any reason to continue the interim relief granted by this Court, since the matter is pending in the Trial Court for a long time. Hence, the request of the learned counsel for the appellants for continuation of interim relief is rejected.

K. L. WADANE, J.