

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 11 OF 2017

MRS. EVAN D'SOUZA @ YVONNE MONICA
D'SOUZA E FERNANDES, REP. BY MR.
AGNELO FERNANDES.,

... Petitioner

Versus

MRS. MARIA RITA CORINTA FERNANDES
AND 3 ORS.,

... Respondents

Mr. Ashwin D. Bhobe, Advocate for the petitioner.

Mr. Gaurish N. Agni, Advocate for the respondent No.1.

None for the respondent nos.2 to 4, though served.

Coram:- C. V. BHADANG, J.

Date:- 13th September 2017

P.C.

The petitioner is challenging the order dated 26/09/2016, passed by the learned Administrative Tribunal, rejecting an application for condonation of delay in filing an application for leave to appeal.

2. The brief facts are that on an application by Maria Rita Corinta Fernandes, the learned Deputy Collector and Sub-Divisional Officer, Mapusa by an order dated 23/07/1990 had directed demarcation of the land survey Nos.100/2, 105/2 and 105/4 of village Parra, Bardez Taluka. The petitioner, who is the owner of adjoining land bearing Survey No.105/11, claims

that by virtue of the said demarcation, the area of his land is reduced from 225 square metres to 100 square metres. Indisputably, the petitioner was not a party to the proceedings initiated by Maria Fernandes. After the petitioner came to know of the said order, the petitioner approached the learned Deputy Collector and Sub-Divisional Officer for review of the order dated 23/07/1990. The learned Deputy Collector dismissed the said application by an order dated 08/01/2014. The petitioner sought to challenge the said order before the learned Administrative Tribunal along with an application for leave to appeal and an application for condonation of delay. That application was filed on 11/07/2014. The learned Tribunal, by an order dated 26/09/2016, has dismissed the said application, which order is subject matter of challenge in this petition.

3. I have heard Shri Bhobe, the learned Counsel for the petitioner and Shri Agni, the learned Counsel for the first respondent. None appears for the respondent nos.2 to 4, though served. Perused record.

4. It is submitted by Shri Bhobe, the learned Counsel for the petitioner that the petitioner was not a party to the proceedings before the learned Deputy Collector. It is submitted that while deciding the application for condonation of delay, the learned Administrative Tribunal has gone into merits of the matter,

which is not permissible. The learned Counsel has pointed out the observations in para 5 of the impugned order, where the learned Tribunal has acknowledged that it cannot go into merits of the appeal, prior to deciding an application for condonation of delay, however, at the same time, has adverted to the merits of the matter. It is, therefore, submitted that the application for condonataion of delay may be allowed and the appeal along with an application for leave to appeal may be sent back to the learned Administrative Tribunal.

5. Shri Agni, the learned Counsel for the first respondent has supported the impugned order. It is submitted that in any case, the petitioner has not explained the delay from 08/01/2014 to 11/07/2014 for 88 days.

6. In reply, it is submitted by Shri Bhobe, the learned Counsel for the petitioner that the petitioner was suffering from Rheumatism and Arthritis and a statement to that effect is made in para 6 of the application. As such, the said delay also has been satisfactorily explained.

7. I have carefully gone through the record and the impugned order passed.

8. The principles, which are applicable while considering the

application for condonation of delay are too well settled to be restated. The Tribunal has extensively referred to the reported cases including the decision of the Hon'ble Supreme Court in the case of ESHA BHATTACHARJEE VS. MANAGING COMMITTEE OF RAGHUNATHPUR NAGAR ACADEMY; [(2013)12 SCC 646]. The principles as enumerated in these cases, cannot be disputed. The question is of applying these principles to the individual facts of each case. It is trite that the question whether the party has made sufficient cause for condonation of delay, would depend upon the facts and circumstances of each case. The Tribunal has also made extensive observations about the proceedings before the Courts and the Tribunals being dragged unnecessarily on one count or the other and there being unending prolixity at every stage 'providing a legal trap to the unwary'. It has been observed that unscrupulous persons take undue advantage of procedural complications and the Tribunal must effectively discourage unscrupulous and dishonest litigation to avoid abuse of time and process of law. The observations, in principle, cannot be disputed. The question, however, as noticed earlier, is about the individual facts of each case. There is no finding that the petitioner in the present case is dishonest and is intentionally indulging into unending prolixity.

9. Reverting back to the present case, admittedly, the petitioner

was not a party to the proceedings before the learned Deputy Collector, in which, order of demarcation was passed. According to the petitioner, the said order is resulting into reduction of his adjoining land by about 125 square metres. The petitioner, on coming to know of the said order, had approached the Deputy Collector, seeking review, which was dismissed on 08/01/2014. In so far as the period from 08/01/2014 to 11/07/2014 is concerned, the petitioner has stated on affidavit that she was suffering from Rheumatism and Arthritis, as a result of which, she could not take steps to challenge the order. It is well settled that while considering the question of delay, the Court has to take a pragmatic view of the matter. No party stands to gain by approaching the Court late and there is no presumption that the delay is intentional. (See COLLECTOR, LAND ACQUISITION, ANANTNAG VS. KATIJI; AIR 1987 SC 1353). Considering the overall circumstances, in my considered view, a case for condonation of delay is made out. The petition is, accordingly, allowed. The impugned order is hereby set aside. The application for condonation of delay is allowed. The learned Tribunal shall decide the application for leave to appeal on its own merits and in accordance with law.

C. V. BHADANG, J.

SMA