

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 71 OF 2017**

1. Shri Putu Rabhoba Pagi,
Son of late Rabhoba Pagi,
Major of age, Indian
R/o H. No.276, Patnem,
Colomb, Canacona-Goa.
2. Shri Santosh Raghoba Pagui,
Son of late Rabhoba Pagi,
Major of age, Indian,
R/o H. No.278, Patnem,
Colomb, Canacona-Goa.
3. Shri Dilkush Raghoba Pagui,
Son of late Rabhoba Pagi,
Major of age, Indian,
R/o H.NO.277, Patnem,
Colomb, Canacona-Goa.

.... Petitioners

V e r s u s

1. White Raj Resorts Private Ltd.
A private Limited Company,
Duly incorporated under the
Indian Companies Act 1956,
Represented herein by
its authorized officer
Stephan Vornokov,
Aged 29 years, married, service,
R/o Tubki house Nagorseem,
Canacona-Goa.
2. Mr. Fernando Jorge De Figueirado Rebeiro,
3. Smt. Maria De Lourdes Filomeno Figueiredo,
De Alduquere,
Both R/o H. No.377, Loutoulim,
Salcette-Goa.

.... Respondents

(All above are registered addresses)

Shri A. P. Gosavi, Advocate for the Petitioners.

Shri S. Samat, Advocate for the Respondents.

CORAM: C. V. BHADANG, J.
DATE: 13th February, 2017.

ORAL ORDER:

The petitioners are challenging the order dated 29/11/2016 passed by the learned Adhoc District Judge-I, FTC-I, South Goa, Margao in Civil Misc. Application No.157/2015. By the impugned order, the learned District Judge has allowed the application filed by the first respondent for condonation of delay and leave to file appeal.

2. The brief facts are that, the petitioners had filed an application under section 7 of the Goa, Daman and Diu Agricultural Tenancy Act 1964 (the Act, for short) against Smt. Amalia Gomes (since deceased). The respondent nos. 2 and 3 were brought on record as the legal representatives before the learned Mamlatdar at Canacona. The learned Mamlatdar by a Judgment and order dated 2/6/2011 declared the petitioners as joint tenants in respect of an area admeasuring 12,200 sq.mtrs of survey no.80/1 known as Colomb of Village Nagorcem, Palolem of Canacona. The respondent no.1 claim to have purchased the property under a registered sale deed dated 27/1/2007. The first respondent filed an application for condonation of delay

and leave to file appeal challenging the order by which the petitioners have been declared as tenants. It was contended that the first respondent came to know of the said order 15 days prior to the filing of the application when it was brought to their notice in Mutation proceedings. It was contended that the first respondent was not a party to the tenancy case and, as such, the limitation would run from the date of knowledge.

3. The petitioners opposed the application on the ground that the first respondent has purchased the property during pendency of the proceedings before the Mamlatdar. It was contended that the first respondent was aware of the order dated 2/6/2011, as it was brought to their notice on 3/12/2011, 8/10/2012 and 26/7/2013 by publishing a public notice in the newspaper. It was contended that the limitation cannot be reckoned from the date of knowledge and there is gross delay.

4. The learned District Judge noted that the first respondent was not a party to the proceedings before the Mamlatdar and on purchase of the property under the sale deed of the year 2007, they stepped into the shoes of the vendors. The learned District Judge further noticed that in the Form No.I and XIV of survey no.80/1, the name of the deceased father of the petitioners is recorded in the Other Rights Column. However, there is no mention that

the deceased father of the petitioners was a tenant. The evidence before the learned Mamlatdar was recorded ex parte against the vendors of the first respondents and in such circumstances, the aggrieved party needs to be given an opportunity by condoning the delay and grant of leave. The learned District Judge has further found that the application for leave does not smack of malafides and the petitioners can be compensated with costs for the prejudice caused to them due to the delay. In such circumstances, the application filed by the first respondent has been allowed subject to costs of Rs.10,000/-. It is this order which is subject matter of challenge in this writ petition.

5. I have heard Shri Gosavi, the learned counsel for the petitioners and Shri Samant, the learned counsel for the respondent no.1. With the assistance of the learned counsel for the parties, I have perused the relevant record and gone through the impugned order.

6. It is contended on behalf of the petitioners that the limitation to file the appeal would run from the date of order and not from the date of knowledge. It is submitted that even otherwise, the first respondent was aware of the passing of the order. It is pointed out that the first respondent has purchased the property during the pendency of the proceedings before the

Mamlatdar and as such, they cannot justifiably seek leave to challenge the order by condoning the delay.

7. On behalf of the petitioners reliance is placed on the decision of the Punjab and Haryana High Court in the case of **Inderjeet Wadhwa Vs. Jagjit and Anr.** (AIR 2005 P H 216). It is submitted that the learned District Judge was in error in allowing the application filed by the first respondent.

8. On the contrary the learned counsel for the first respondent submitted that the first respondent was not aware of the order which was brought to their notice during the mutation proceedings. It is submitted that a third party whose rights are adversely affected can challenge the order with leave of the Court. It is submitted that once the learned District Judge has exercised the discretion in condoning the delay and granting leave, the same does not call for any interference unless the order is shown to be perverse.

9. I have considered the circumstances and the submissions made. Normally, this Court would be slow in interfering with the order by which the Court below has exercised discretion in condoning the delay. The supervisory powers under Article 227 of the Constitution of India are aimed at ensuring that the Subordinate Courts and Tribunals act within the bounds of their

authority and to see that the impugned order does not result into manifest injustice (see the case of **Shalini Shyam Shetty & Anr. Vs. Rajendra Shankar Patil (2010) 8 SCC 329**).

10. In the case of **Inderjeet Wadhwa Vs. Jagjit (supra)**, there was a Second Appeal against an order dismissing the application seeking condonation of delay and leave to appeal. The Punjab and Haryana High Court after noticing the provisions of section 52 of the Transfer of Property Act has refused to interfere with the order of the learned District Judge.

11. It is true that there are certain public notices issued on behalf of the petitioners about the possible transfer of the subject land. The first respondent claimed that the order passed by the Mamlatdar came to their knowledge during the course of the mutation proceedings. The question about the effect of the sale deed being executed during the course of the tenancy proceedings and on the other aspects on merits will have to be gone into when the appeal is heard on merits. The learned District Judge has placed reliance on the decision of the Hon'ble Supreme Court in the case of **Esha Bhattacharjee vs. Manging Committee of Raghunathpur Nafar Academy and others, 2013 Law Suit (SC) 810**, in order to find that a case for condonation is made out. Having carefully gone through the impugned order,

I do not find that the impugned order suffers from any infirmity so as to require interference. The impugned order also cannot be said to result in any manifest injustice as the petitioners would get an opportunity to contest the appeal on merits. In such circumstances, the petition is dismissed with no order as to costs. It is made clear that the rival contentions of the parties are left open to be agitated before the Appellate Court.

C. V. BHADANG, J.

Ap/