

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 247 OF 2017

SHRI. LAXIMAN ARJUN KHOT., ... Petitioner
Versus
MR. DEMGO VITHU KHOT., ... Respondent

Mr. Ravi Gawas, Advocate for the Petitioner.

Coram:- C. V. BHADANG, J.

Date:- 31st July, 2017

ORAL ORDER:

Heard the learned Counsel for the petitioner, for sometime.

2. The respondent has filed a suit under Section 4 of the Mamlatdar's Court Act, 1966 (Act, for short), for a direction to the petitioner to remove the alleged obstruction to the natural flow of water and to bring the canal into "natural estates". In para 15 of the application the respondent has stated that the cause of action to file the suit arose in first week of February, 2014 and then again on 18.05.2015. The suit was filed on 09.07.2015. The petitioner raised a preliminary objection based on Section 4(3) of the Act, which states that no suit shall be entertained by the Mamlatdar's Court, unless it is brought within one year from the date on which the cause of action arises. In short, according to the petitioner, the suit is barred by limitation, as it is filed beyond the period of one year from February, 2014.

3. The learned Mamlatdar rejected the preliminary objection by an order dated 06.04.2016. The petitioner sought to challenge the said order in revision, before the learned Additional Collector, which was barred by limitation by ten days. Hence, the petitioner filed an application for condonation of delay. The Additional Collector, by impugned order dated 01.12.2016 has dismissed the said application for condonation of delay, which brings the petitioner to this Court.

4. I have heard the learned Counsel for the petitioner. None appears for the respondent, though served.

5. It is submitted by the learned Counsel for the petitioner that looking to the quantum of delay, which was only of ten days, the learned Additional Collector was in error in refusing to condone the same. He submits that the suit filed by the respondent before the learned Mamlatdar is clearly barred by limitation as Section 4(3) of the Act prescribes that such a suit can be brought within one year from the accrual of cause of action. It is submitted that on his own saying, according to the respondent, the cause of action arose in first week of February, 2014 and the suit having been filed on 09.07.2015, was barred by limitation.

6. I have carefully considered the circumstances and the submissions made. The only question, which presently fall for

determination is whether, the order refusing to condone the delay is legal and proper ? Normally a delay of ten days, would have been justifiably condoned. However, in the present case, it is undisputed that the revision, which the petitioner wants to file before the learned Additional Collector, is only against an order rejecting a preliminary objection. The learned Counsel for the petitioner, on instructions, states that the petitioner has filed a detailed written statement on merits, in which also, the aforesaid preliminary objection regarding the suit being barred by limitation is raised. If, that be so, it will always be open to the learned Mamlatdar to consider the same, at the hearing of the suit by framing appropriate point/issue as to whether, the suit is barred by limitation.

7. In that view of the matter, I decline to entertain the petition. The petition is accordingly dismissed.

C. V. BHADANG, J.

EV