

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 552 OF 2016

SHRI SHRIPAD HARI @ BABA PAI AND
ANR.

... Petitioner

Versus

SHRI PANDURANG RAMA @ DHOND
KHAVNEKAR AND 6 ORS.

... Respondent

Mr. Devidas J. Pangam with Mr. Luis Fernandes, Advocates for
the Petitioners.

Mr. Guru Shirodkar, Advocate for Respondent Nos. 1 and 3 to 5.

Coram:- C. V. BHADANG, J.

Date:- 16th March, 2017

ORAL ORDER:

On 18.06.2016, a notice of final disposal was issued and
accordingly, the petition is being disposed off finally.

2. The petitioners are challenging the order dated 20.11.2015,
passed by the learned District Judge at Mapusa, by which delay
of 308 days in filing appeal by respondent nos. 1 to 6, has been
condoned.

3. The respondent nos. 1 to 6 had applied to the Mamlatdar
under Section 7 of the Goa, Daman and Diu Agricultural
Tenancy Act, 1964 for declaration as tenants. It appears that the
Mamlatdar had heard arguments of the parties on 04.09.2013 and
the matter was closed for judgment. It further appears from the

record that according to the respondents, on 21.10.2013, respondent no. 1 alongwith his Advocate had visited the office of the Mamlatdar to inquire about the status of the matter. On the following day i.e. on 22.10.2013, respondent no. 1 gave a letter to the Mamlatdar (page 76 of the compilation), suggesting that the Mamlatdar may not pass the order in as much as the Mamlatdar was promoted and was having three other additional charges.

4. According to the respondents on 11.09.2014, the petitioners brought stones for effecting some construction in the property, whereupon the respondents inquired with the office of the Mamlatdar, when it was learnt about the order passed in the tenancy case on 17.10.2013. It further appears that the certified copy was applied on the same day i.e. 11.09.2014, which was delivered on 15.09.2014 and the appeal alongwith the application for condonation of delay came to be filed on 27.10.2014, resulting into a delay of 308 days.

5. The learned District Judge has found that there is no negligence or deliberate inaction on the part of respondent nos. 1 to 6. The learned District Judge has further found that the impugned order dated 17.10.2013 was not informed to the respondents by their Advocate, which is fortified by letter dated 22.10.2013. The learned District Judge has further noted that the

respondents have stated on affidavit that the staff of the Mamlatdar's Court did not give them correct information. In that view of the matter, the learned District Judge found that notwithstanding the length of delay, the explanation is acceptable and no prejudice would be caused to the petitioners, if the delay is condoned.

6. I have heard Shri Pangam, the learned Counsel for the petitioners and Shri Shirodkar, the learned Counsel for the respondent nos. 1 to 5.

7. It is contended on behalf of the petitioners that it is inappropriate for respondent nos. 1 to 6 to issue a letter dated 22.10.2013. It is submitted that there is no explanation for the delay from 22.10.2013 till 11.09.2014, even assuming that the respondents were not aware of passing of the order till 22.10.2013.

8. On the contrary, the learned Counsel for the respondent nos. 1 and 3 to 5 has supported the impugned order. It is submitted that once the learned District Judge has exercised discretion in condoning the delay, this Court may not interfere with the same.

9. I have considered the circumstances and the submissions made. Although, the tenure of the letter dated 22.10.2013 is inappropriate, the letter can be looked into for a limited purpose of deciding whether the respondents were aware of the passing of the order on 22.10.2013. The perusal of the letter would clearly go to show that the respondents were not aware of the passing of the order dated 17.10.2013. The respondents have come with a case that it was on 11.09.2014, when the petitioner brought stones on the site for construction, that they were alarmed and then enquired with the office of the Mamlatdar. It is contended that in the meantime, the Appellate Jurisdiction was transferred to the District Judge and accordingly, the appeal came to be filed on 27.10.2014.

10. I have carefully gone through the application for condonation of delay and the impugned order passed and I do not find that any case for interference is made out. There are no circumstances on record to suggest that the respondents are guilty of negligence. The respondents do not stand to gain by approaching the Court late. It is further well settled that once the Court below has exercised the discretion in condoning the delay, this Court would be slow in interfering with the same, more so, in the exercise of the supervisory jurisdiction, under Article 227 of the Constitution of India, unless and until the exercise of discretion is said to be perverse, which I do not find in this case.

The impugned order does not result into any manifest injustice, in as much as the petitioners would get an opportunity to contest the appeal on merits.

The petition is accordingly dismissed, with no order as to costs.

C. V. BHADANG, J.

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