

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.465 OF 2017.

Venacio Cardozo, Represented by
 legal heirs,

1. Anne Pereira e Cardozo w/o
 Venancio Cardin Cardozo,
 major, widow, housewife
2. Jersy Cardozo, w/o Joseph
 Cardozo, major, married,
 housewife,
3. Anthony Cardozo s/o
 Venancio Cardozo, major,
 married, business
4. Edwin Cardozo s/o Venancio
 Cardozo, major, unmarried,
 unemployed. All resident of
 Dialgona Navelim, Salcete
 Goa.

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Petitioners.

V/s

1. Velia de Sequeira e Souza,
 Major, landlady, residing at
 House No.79, PO Cansaulim,
 Velsao, Goa.
2. Joseph Cardozo s/o Venancio
 Cardozo, major, married,
 service and his wife,
3. Suzie Cardozo w/o Anthony
 Cardozo, major, married,
 housewife,
4. Mathew Cardozo s/o
 Venancio Cardozo, major,
 married, service and his wife
5. Sabina Cardozo w/o Mathew
 Cardozo, major, married,
 housewife, All resident of
 Dialgona Navelim Salcete,
 Goa.

Deleted vide
 order dated
 11.5.2017.

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Respondents.

Ms. A. Desai, Advocate for the petitioners.

Ms. S. Bhobe, Advocate for the respondent no.1.

CORAM: M. S. SONAK, J.

Date:11th May, 2017.

ORAL JUDGMENT:

Ms. A. Desai, learned Counsel submits that respondent nos. 2 to 5 are also family members of the petitioners/tenants. However, they could not be impleaded as petitioners, as they are out of station. She rightly submits that their presence is not necessary in disposal of the present petition, accordingly, leave is granted to delete respondent nos.2 to 5. Amendment to be carried out forthwith.

2. Heard Ms. A. Desai, learned Counsel for the petitioners and Ms. S. Bhobe, learned Counsel for respondent no.1. Ms. S. Bhobe, learned Counsel for the respondent no.1 consent to the disposal of the petition at the stage of admission itself.

3. Rule. Rule made returnable forthwith with the consent as aforesaid.

4. The petitioners challenge order dated 10.4.2017 made by the Ad-hoc District Judge-2(FTC-II) South Goa Margao, refusing to condone the delay of 12 days in instituting an appeal against eviction

order dated 29.12.2016.

5 Upon hearing the learned Counsel for the parties and on perusing the records, I am satisfied that the impugned order is required to be set aside and the delay of 12 days in instituting the appeal is liable to be condoned. It is to be noted that to the credit of the respondent no.1 and her counsel that they had not even opposed for condoning the delay of 12 days in the institution of the appeal. It is true that such non opposition does not mean in every case, the Court is bound to condone the delay when no sufficient cause is shown. However, in the facts and circumstances of the present case, more than, sufficient cause has been shown, therefore, there was no justification whatsoever in refusal to condone the delay of mere 12 days in institution of the appeal against an eviction order.

6. Upon perusal of the application seeking condonation of delay, it is seen that there are detailed averments to the effect that matter was entrusted to Advocate Gomes to institute an appeal well within the prescribed period of limitation. The petitioner further states that the aunt of the Advocate Gomes was extremely serious and had to be admitted in the hospital and put on ventilator. Ultimately, aunt, succumbed to the ailment and expired on 11.2.2017. The Advocate naturally, was not available at his chamber for few days and no sooner, he resumed, the appeal papers were prepared and appeal was lodged. This is more than sufficient cause for condoning the delay

and it is really appreciable that the respondent no.1 or her counsel chose not to object for condonation of such delay.

7. There are absolutely no malafides nor this is the case of adoption of any dilatory tactics. The observation that appellant allowed the period of limitation to expire without any bonafide reason for not engaging any other counsel to file the appeal and that such conduct shows negligence of the appellant is the observation which is uncalled for in the facts and circumstances of the present case. The approach of the learned Appeal Court is contrary to the well settled principles in matters of condonation of delay.

8. In ***N. Balakrishnan Vs. M. Kishnamurthy, (1998)7 SCC 123*** this is what is stated by the Hon'ble Supreme Court, in the matters of condonation of delay.

“9. It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in reversional jurisdiction, unless the exercise of

discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

10. *The reason for such a different stance is thus:*

The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. The time-limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause.

11. *Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae ut sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is*

that every legal remedy must be kept alive for a legislatively fixed period of time.

12. *A court knows that refusal to condone delay would result foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide Shakuntala Devi Jain Vs. Kuntal Kumari [AIR 1969 SC 575] and State of West Bengal Vs. Administrator, Howrah Municipality [AIR 1972 SC 749].*
13. *It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. While condoning the delay, the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant, the court shall compensate the opposite party for his loss."*

9. For the aforesaid reasons, the impugned order is set aside and the delay in institution of the appeal is condoned.

10. This is really not a case where costs are liable to be imposed upon the petitioners. Nevertheless, it is required to be noted that respondent no.1, despite have graciously and correctly not objected to condonation of delay was required to appear in this Court. In these circumstances, Ms. Desai, has submitted that petitioners, will on their own pay an amount of Rs.2500/- to the respondent no.1 within a period of two weeks from today. This statement is both accepted and appreciated.

11. Hence, impugned order is set aside. Delay in institution of the appeal is condoned. The appeal is directed to be registered in accordance with law and thereafter disposed of on its own merits. Parties to appear before the learned Appeal Court on 7.6.2017 at 10.00a.m.

12. Rule is accordingly made absolute in the aforesaid terms.

M. S. SONAK , J.

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