

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 852 OF 2016**

MRS. ELIZABETH DE SOUZA (DEC) THR.
HER LRS. MR. LUIS CUNHA.,

... Petitioner

Versus

COMMUNIDADE OF BATIM, THR. ITS
ATTORNEY AND 3 ORS.,

... Respondents

Mr. Anthony D'Silva, Advocate for the Petitioner.

Mr. Ajit R. Kantak with Ms. Rajas A. Kantak, Advocates for the
Respondent No.1.

CORAM:- C. V. BHADANG, J.

DATE:- 19th JANUARY, 2017.

ORAL ORDER:

By this petition, the petitioner is challenging the judgment and order dated 29.03.2016, passed by the learned Adhoc District Judge at Panaji, in Tenancy Revision Application No.193/2015 and the judgment and order dated 30.10.2012, passed by the learned Deputy Collector at Panaji, Goa, by which the Courts below have refused to condone the delay of 1929 days, in challenging the order passed by the learned Joint Mamlatdar, Panaji on 06.06.2006.

2. The brief facts necessary for the disposal of the petition may be stated thus:

That, respondent no.1-Communidade of Batim had filed Regular Civil Suit No. 69/1992/D against now deceased, Mrs. Elizabeth D'Souza and Mr. Antonio Cunha, who happen to be the parents of the petitioner. That suit, was filed for eviction of land bearing Survey No. 65/2, 3 4 and 6 of village Batim. Original respondents-Mrs. Elizabeth D'Souza and Mr. Antonio Cunha raised a plea of tenancy, which issue was referred to the Joint Mamlatdar. It appears that before the Joint Mamlatdar, the present petitioner and three others were brought on record as heirs of Mrs. Elizabeth D'Souza. The matter was contested and the learned Joint Mamlatdar answered the issue in the negative, refusing to declare the petitioner and other heirs as tenants in respect of the subject land. The petitioner and other heirs sought to challenge the said order, wherein there was a delay of 1929 days. The condonation of delay was sought under Section 52 of the Goa, Daman and Diu Agricultural Tenancy Act, 1964 (the Act, for short) read with Section 5 of the Limitation Act, 1963.

3. The case made out in the application was that the certified copy of the impugned order dated 06.06.2006 was applied for on 08.11.2011 and the same was delivered on 14.11.2011. It was contended that the case before the Joint Mamlatdar was proceeded and looked after by the brother of the petitioner Mr. Maneithino Cunha, who could not be contacted and hence, the learned Counsel for the petitioner and others could not be advised to challenge the order within the stipulated time. It appears that the order in the reference was communicated to the civil Court. The civil Court issued summons to the petitioner, which was received by the petitioner on or about 10.05.2010 as Mr. Maneithino Cunha, who was otherwise looking after the case "in the interregnum", had migrated to United Kingdom. It was contended that the summons issued by the civil Court did not enclose the copy of the impugned order passed by the Joint Mamlatdar and therefore, even when the summons was received, the petitioner did not realise that he was required to file an appeal. It was only on 12.10.2011, when the petitioner was informed by their Advocate about the affidavit in lieu of chief examination filed by respondent no.1-plaintiff and it was at this

stage, that the petitioner was made aware and could understand the “true scope and the meaning of the impugned order dated 06.06.2006 and its consequences with respect to Regular Civil Suit No. 69/1992” and therefore, was constrained to challenge the same. However, in the meantime, the Advocate was on leave and had gone outstation for diwali vacation and the petitioner was informed that the Advocate will be returning only on 08.11.2011. In such circumstances, the petitioner-Mr. Luis Cunha obtained the certified copy on 14.11.2011 and the appeal under Section 49 of the said Act alongwith application for condonation of delay came to be filed on 16.11.2011. It was contended that the petitioner would suffer irreparable injury, in the event, the delay is not condoned and the petitioner has a good case on merits.

4. The application was signed by the petitioner-Mr. Luis Cunha and was supported by an affidavit of Advocate Shri Linus Emmunuel.

5. The application was opposed on behalf of respondent no.1.

6. The learned Deputy Collector found that the petitioner had not made out any case for condonation of delay and consequently, dismissed the application. The petitioner challenged the same before the learned Adhoc District Judge, who concurred with the finding recorded by the learned Deputy Collector. Hence, this petition.

7. I have heard Mr. D'Silva, the learned Counsel for the petitioner and Mr. Kantak, the learned Counsel for the respondent no.1. With the assistance of the learned Counsel for the parties, I have gone through the impugned order passed by the Deputy Collector and the judgment of the learned District Judge.

8. It is submitted by the learned Counsel for the petitioner that after the tenancy issue was framed and was referred to the Joint Mamlatdar, the proceedings in the suit were adjourned sine die. It is submitted that the reference before the Joint Mamlatdar was looked after by Mr. Maneithino Cunha on behalf of the petitioner and other legal representatives. It is submitted that in the meantime, Mr. Maneithino Cunha had

migrated to United Kingdom, as a result of which, the Advocate for the petitioner could not contact him and was unable to advise filing an appeal. It is submitted that after the reference was answered and communicated to the civil Court, although, summons was received by Mr. Luis Cunha, some time on 10.05.2010, as the summons was not accompanied with the order of the Joint Mamlatdar, the petitioner could not have been aware of the order passed. It is submitted that it was only on 14.11.2011 that the Advocate informed the petitioner the true import of the order and the necessity to challenge the same was realised. It is submitted that thereafter, the appeal alongwith the application for condonation of delay was filed on 16.11.2011. The period from 12.10.2011 till filling of the application was spent on account of obtaining certified copy and non availability of the Advocate due to diwali vacation. It is submitted that the delay is neither intentional nor arising out of negligence, as the petitioner did not stand to gain by approaching the Court late. It is submitted that the application was also supported by an affidavit of Advocate Linus Emmunuel and the Courts below were in error in refusing to condone the delay.

On behalf of the petitioner, reliance is placed on the decision of the Hon'ble Supreme Court in the case of **Collector, Land Acquisition, Anantnag & Another Vs. Mst. Katiji, (1987) 2 SCC 107** and the decision of this Court in the case of **Sanjay Sadhashiv Jadhav Vs. The Joint Director of Higher Education & Others, 2016(1) ALL MR 256**. It is submitted that respondent no.1 can be compensated by imposition of appropriate costs, which the petitioner is willing to pay.

9. On the contrary, it is submitted by the learned Counsel for the respondent no.1 that there is inordinate delay in challenging the order passed by the Joint Mamlatdar, which demonstrates gross laches and absence of diligence on the part of the petitioner. It is submitted that the application does not give material particulars, as to when Mr. Maneithino Cunha had migrated to United Kingdom. It is submitted that this was the principle ground for the petitioner to claim that the Advocate could not establish contact and could not advise the petitioner to challenge the order. It is submitted that there were other legal representatives, who could have been contacted or could have

taken steps for challenging the order. It is submitted that the affidavit filed by Advocate Linus Emmunuel does not show as to what efforts were taken by him to contact Mr. Maneithino Cunha. It is submitted that it was not necessary for the civil Court to have enclosed the order of the Joint Mamlatdar alongwith the summons. It is submitted that even after the receipt of the summons in the suit, the petitioner did not act promptly. It is submitted that the reasons given are not sufficient for condoning the delay.

10. I have carefully considered the rival circumstances and the submissions made and I do not find that a case for interference is made out. The delay is of 1929 days. It is a matter of record that the reference before the Joint Mamlatdar was prosecuted on behalf of the petitioner. Thus, this is not a case wherein, in the reference the petitioner was absent and as such, could have claimed ignorance of the order. The only case made out is that the reference was looked after by Mr. Maneithino Cunha, who "in the interregnum" had migrated to United Kingdom. The learned Counsel for respondent no.1 is justified in

saying that this being the principle ground, the petitioner was expected to give proper details as to when Mr. Maneithino Cunha had migrated to United Kingdom. That apart, there were three other legal representatives, who were parties before the learned Mamlatdar, who could have been contacted, as their address was available on record. Thus, even assuming that Mr. Maneithino Cunha had migrated to United Kingdom, it cannot be accepted that the other petitioners, could not have been contacted for advising them to challenge the order. I have carefully gone through the affidavit filed by Advocate Linus Emmunuel, who claimed that Mr. Maneithino Cunha could not be contacted on his telephone number, which was made available to him. There is nothing on record to show that an attempt was made to communicate the order by post or otherwise, as the address was very much available on record. For these reasons, I do not find that the ground on the basis of non availability of Mr. Maneithino Cunha, could be accepted. It can further be seen that even after receipt of the summons in the suit in May, 2010, the certified copy of the order was applied for on 08.11.2011. This is again on the spacious ground that the true import and the nature of the

order was learnt only on 12.10.2011, when the petitioner was informed by his Advocate. This is a case where the petitioner has not acted with due diligence and the Courts were justified in finding that no sufficient cause has been made out.

11. The Hon'ble Apex Court in the case of **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and Others, (2013) 12 SCC 649**, after taking survey of various decisions holding the field (including the case of **Collector, Land Acquisition, Anantnag** (supra)), has culled out the principles applicable in such a case. It has been inter-alia held that there is a distinction between inordinate delay and a delay of short duration or few days, for to the former, doctrine of prejudice is attracted. That apart, matter of inordinate delay warrants strict approach, although, a liberal approach may be adopted in the delay of short duration. It has been further held that the conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is, so as the fundamental principle is that the Courts are required to weigh the scale of balance of justice in

respect of both parties and the said principle cannot be given a total go by in the name of liberal approach. It has been held that if, the explanation offered is concocted or the grounds urged are fanciful, the Court should be vigilant not to expose the other side unnecessarily to face such a litigation. It has been held that there is an increasing tendency to perceive delay as a non-serious matter, which is required to be curbed, within the legal parameters. If we apply these principles, to the facts of the present case, it cannot be accepted that the petitioner has made out "sufficient cause" for condonation of delay.

12. In the case of **Sanjay Jadhav** (supra), a termination order was initially challenged before the High Court, which petitions were disposed of in view of alternate statutory remedy before the University and College Tribunal. After the disposal of the petitions, the petitioners challenged the termination before the College Tribunal, in which there was a delay of 259 days, which was not condoned by the College Tribunal. It was this order, which was challenged before this Court, wherein it was found that a case for condonation of delay was made out. It can

thus be seen that the case of **Sanjay Jadhav** (supra) turned on its own facts.

13. I have carefully gone through the order passed by the Deputy Collector and the District Judge and I do not find that the impugned orders suffer from any infirmity, so as to warrant interference in the exercise of the supervisory jurisdiction of this Court under Article 227 of the Constitution of India.

The petition is without any merit and is accordingly dismissed.

C. V. BHADANG, J.

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