

IN THE HIGH COURT OF BOMBAY AT GOA

MISC.CIVIL APPLICATION NO. 460 OF 2016

IN

STAMP NUMBER MAIN NO. 1658 OF 2016

SOUTH WESTERN RAILWAYS, THR. ITS
GENERAL MANAGER.

... Applicant

Versus

S.V.E. MUTHU AND CO. THR. ITS
PARNTERS E.M. GEORGE.

... Respondent

Mr. Iftikhar Agha, Advocate for the applicant.
Mr. E. O. Mendes, Advocate for the respondent.

Coram:- F. M. REIS, J.

Date:- 9th March, 2017

P.C.

Heard Mr. I. Agha, learned counsel appearing for the applicant and Mr. E. O. Mendes, learned counsel appearing for the respondent.

2. This is an application for condonation of delay of 390 days in filing First Appeal challenging the judgment and decree passed in Civil Suit No.20/2013 dated 26.03.2015.

3. The learned counsel appearing for the applicant submits that there is sufficient cause in condoning the delay as according to him on account of the administrative reasons, the applicant could not file the Appeal up to July, 2015. It is further pointed out that thereafter the applicant applied for certified copy from the relevant records of the Civil Suit somewhere in August, 2015 which was delivered in January, 2016. Thereafter, according to

him, on account of the administrative procedure to be followed in filing the Appeal, there was further delay on the part of the applicant. The learned counsel further pointed out that there is no deliberate delay on the part of the applicant which would disentitle the applicant for seeking a discretionary relief for condoning the delay.

4. On the other hand, Mr. E. Mendes, learned counsel appearing for the respondent submits that though there are averments in the application to justify the delay up to July, 2015, there is nothing on record to justify further delay in filing the Appeal. The learned counsel as such points out that the applicant has failed to make a sufficient cause in condoning the delay.

5. I have considered the rival contentions of the learned counsel. The application filed by the applicant is supported by an affidavit. The respondent has chosen not to file any reply to such application. The averments made in the application as such stand uncontroverted. No doubt, the averments in the application for condonation of delay prima facie show some lapses by the applicant in approaching the Court within the time prescribed but the point for consideration is whether such delay is on account of some deliberate action or inaction on the part of the applicant which would disentitle the applicant for any discretion in condoning the delay. As pointed out by the learned counsel appearing for the applicant, the applicant sought for copies of the documents in July, 2015 which were delivered to the applicant

only in January, 2016. The remaining delay is on account of the administrative reasons which have not been disputed by the respondent herein.

6. In the peculiar facts and circumstances of the case and considering that while examining an application for condonation of delay, the Court has to take a justice oriented approach and as there are no malafides attributed to the respondent in deliberately approaching the Court belatedly, I find that the delay in filing the Appeal deserves to be condoned. Nevertheless, the respondent are entitled for costs to be paid by the applicant. The costs are quantified at Rs.15,000/- to be paid by the applicant to the respondent within four weeks from today. Hence, the delay in filing the Appeal stands condoned subject to the payment of costs of Rs.15,000/- to the respondent as condition precedent.

7. The application stands disposed of accordingly.

F. M. REIS, J.

at*