

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 75 OF 2017

MEERA TUKARAM NAIK,
also known as Mira Tukaram Naique, aged
70 years, r/o No 669, Karai, Shiroda, Ponda,
Goa

...Appellant

~ VERSUS ~

- 1 GIVAJI BALKRISHNA SINAI HEDE,**
s/o Balkrishna Sinai Hede, aged
about 76 years, married, landlord,
residing at H No 811, Sinaiwado,
Siroda, Ponda, Goa
- 2 MADHURI GAVAJI,**
wife of Givaji Hede, 63 years,
landlady, r/o H No 811, Sinaiwado,
Siroda, Ponda, Goa
- 3 DINEM TUKARAM NAIK**
also known as Rutuja Ramdam Naik,
d/o late Tukaram Naik,
- 4 RAMDAS VENKATESH NAIK**
s/o Venkatesh Naik
- 5 RUPALI TUKARAM NAIK**
d/o late Tukaram Naik
All major of age, resident of H No
669, Karai, Shiroda, Ponda, Goa

... Respondents

APPEARANCES

FOR THE APPELLANT **Mr Vivek Rodrigues**
FOR THE RESPONDENTS **Mr JP Mulgaonkar**
NO 1 & 2

CORAM : G.S.Patel, J

DATED : 28th September 2017

ORAL JUDGMENT:

1. The Second Appeal is directed against an order dated 20th February 2017 of the Ad-hoc District Judge, at Ponda in Civil Misc Application No.249/2016. The Appellant sought by this miscellaneous application that a quite considerable delay of 1577 days in filing the First Appeal be condoned. In the Second Appeal there are, from paragraphs 3(a) to 3(j) reasons, given for the delay. The Appellant is 70 years old. She had several health problems. Respondent No.5 is her daughter. Before the First Appellate Court, the Appellant and the present Respondent No.5 were, respectively, Respondents No.1 and 4.

2. It is difficult, having regard to what is set out, to refuse the Appellant the relief sought. The appellate order is at page 44. It appears that medical certificates were produced. The explanation of the present Appellant that she believed that her daughter, present Respondent No.5, would be attending the case was also noted. Respondent No.5 had a difficult delivery and there were problems of postnatal care.

3. The First Appellate Court was moved to comment on the conduct of the Appellant. Some learning was cited on the subject of delay.

4. As I have recently held in *KGN Ore Carrier v Adithri Trading Co & Anr*¹ that in matters like this no Court is required to follow any absolute principle, but each case must be decided on its own facts. It is true that as Courts of law must apply the law, but in that application we must be guided by considerations of justice, compassion, and empathy. A cardinal consideration to my mind is that to the extent possible and except in the most egregious cases, no party should be denied an opportunity of pursuing his or her remedy, or an appeal which is a matter of right.

5. What courts should be slow to do is to so firmly shut their doors in a litigant's face. That is always an exception, and it can only be done in a truly egregious case, one that can fairly be said to shock the conscience of the court: where, for instance, the delay is inordinate and is wholly unexplained or is insufficiently explained. It is never appropriate to speculate as to what a party might or might not have done, or as to what might or might not have been. As I held in *KGN Carrier*,

Those who crowd our court halls come not to enjoy the creature comforts we afford, such as they are, but because they are driven to it. In their daily lives, they are under constraints and pressures. Sometimes they err, or make errors of judgment. So do we all. They come to us for

1 SA No 87 of 2017, decided on 21st September 2017.

redress, and while we will not entertain the indolent and shiftless, we must not, equally, rebuff the genuine.

6. In such cases, Courts are not without means. A party who is late can be put to terms. In a given case an order of costs may be warranted. A Court may also decide to refuse a late comer any indulgence of adjournment or a long time to prepare and may require that party to adhere to a strict time schedule. A Court may well fashion some in between order as well. But to wholly unseat a litigant, especially when personal issues are presented and these are not demonstrated to be false, is to my mind unjust, unwarranted and needlessly harsh. Justice, as we know, has many dimensions.

7. I will admit this appeal on the following substantial questions of law:

“(a) Whether the First Appellate Court committed a perversity in holding that there was not sufficient cause made out by the Appellant for condoning the delay for filing first appeal?

(b) Whether the First Appellate Court did not consider that there was no benefit that would accrue to the Appellant by the delay and that their proprietary rights would be affected if it was not delayed?

(d) Whether the principles of condonation of delay have not been properly examined and applied by the first appellate Court while deciding the application for condonation of delay?”

8. The appeal is taken up for hearing and final disposal forthwith, and, for the foregoing reasons, is allowed.

9. The Order of the First Appellate Court is set aside. Civil Misc Application No. 249 of 2016 is allowed. The First Appeal filed by the present Appellant is restored to file. Parties will appear before the First Appellate Court on 6th November 2017 at 10.00 a.m. This date is suggested by the learned Advocate for the Respondents.

10. Given the submissions by the Respondents, it is only fair that the Appellant be put to some terms. The First Appellate Court is requested, therefore, to fix a schedule for disposal of the appeal at its convenience. The present Appellant will adhere to that schedule and will not ask for any adjournment, rescheduling or postponement on any ground whatsoever, including the Appellant's health. It is on this assurance alone that I am making this order.

11. The Second Appeal is disposed of in these terms. There will be no order as to costs.

G. S. PATEL,J