

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL No. 105 OF 2014

M/S COSTA PINTO AND ASSOCIATES
REP. BY ITS PARTNERS MR. JOSEPH
ALFRED D'COSTA AND CAROL D'COSTA.

... Appellant

Versus

M/S PRESTIGE HOLIDAY RESORTS LTD.,
REP. BY ITS DIRECTOR MR. DATTA
PATIL.

... Respondent

Mr. S. Desai, Senior Advocate with Mr. Pavithran, A. C., Advocate for the appellant.

Mr. Ashwin D. Bhobe, Advocate for the respondent no. 1..

Coram :- C. V. BHADANG, J

Date : 23rd June, 2017.

ORAL ORDER:

The appellant had filed a Suit for specific performance against the respondent which was dismissed by the Trial Court by Judgment and Decree dated 10.05.2013. The appellant sought to challenge the same by filing an appeal in which there was a delay of 13 days. Hence, an application for condonation of delay was filed which was registered as Civil Miscellaneous Application no. 94 of 2013. The learned District Judge by impugned order dated 30.04.2014 has dismissed the application. Hence, this Second Appeal.

2. The second appeal is heard finally on the following substantial question of law:

"Whether the learned District Judge was justified in holding that there was no sufficient cause within the meaning of Section 5 of the Limitation Act, particularly, when, as per the decision of the Hon'ble Court in the case of **Esha Bhattacharjee versus Managing Committee of Raghunathpur Nafar Academy & Ors., (2013) 12 SCC 649**, the Court has to be liberal in the matter of condonation of delay of short duration.

3. Shri Bhobe, learned Counsel waives service for the respondent. Heard finally by consent of the parties.

4. It is apparent from the record that the delay was only of 13 days and the application was supported by the affidavit of the Managing Partner. The Hon'ble Supreme Court in the case of **Esha Bhattacharjee** (supra), after taking a survey of various decisions holding the field, has culled out the principles which are germane while considering a plea for condonation of delay. It has been, inter alia, held that the Courts have to adopt a liberal approach in the matter of condonation of delay of short duration. In the present case it is not disputed that the delay was only of 13 days. Thus a case for condonation of delay was made out for the reasons stated in the application. The Impugned Order refusing the condonation of delay thus cannot be sustained. In the result, the following Order is passed:

ORDER

- i. The Second Appeal is allowed.

- ii. The Impugned Order dated 30.04.2014 is hereby set aside.
- iii. The application for condonation of delay filed by the appellant is hereby allowed.
- iv. The learned District Judge shall proceed to get the appeal registered and decide the same on merits in accordance with law.
- v The parties to appear before the learned District Judge on 10.07.2017 at 10:00 a.m.

C. V. BHADANG, J

msr.