

IN THE HIGH COURT OF BOMBAY AT GOA**MISC. CIVIL APPLICATION NO. 474 OF 2017****IN****WRIT PETITION NO. 378 OF 2009**

Smt. Anandi Datta Dabolkar ... Applicant

Versus

Shri Atmaram Shambu Dabolkar
& 134 Others ... Respondents

Shri Chaitanya P. Padgaonkar, Advocate for the Applicant.

Ms. Ketaki L. Pednekar, Advocate for the Respondents.

CORAM:- C.V. BHADANG, J.

DATE:- 11th SEPTEMBER, 2017.

P.C:

This is an application purportedly filed under Section 148 of the Code of Civil Procedure, 1908 (CPC, for short), for extension of time to deposit the costs and for restoration of the Appeal before the learned District Judge.

2. The brief facts are that, the petitioner has challenged the dismissal of her suit, before the learned District Judge, in Regular Civil Appeal No. 28/2003. That appeal was dismissed for want of service of some of the respondents. The petitioner challenged the said dismissal before this Court in Writ Petition

No. 378/2009. This Court disposed of the said petition on 17.04.2017 in the following terms:

(i) The impugned orders referred to in paragraph 2 of the judgment and order are hereby set aside and the Regular Civil Appeal No. 28/2003 is restored to the file of the learned Appeal Court.

(ii) The aforesaid, is subject to payment of costs of ₹1,00,000/- (Rupees one lakh only) by the petitioners in the following manner:-

(a) Costs of ₹50,000/- shall be paid to the respondent nos.1(i), 1(b) 1(bi) and 1(d) who have contested this appeal by engaging an advocate;

(b) Costs of ₹50,000/- to be paid to the original defendants in the suit or their legal representatives (other than the aforesaid respondents).

(c) Costs of ₹1,00,000/- in all to be deposited before the Appeal Court within a period of 6 weeks from today. Thereafter, the respective respondents, shall be at liberty to withdraw the same unconditionally.

(iii) In case the amount of costs is not deposited before the Appeal Court within a period of 6 weeks from today, the appellants shall not have the benefit of this order and this appeal shall be deemed to have been dismissed without any further reference to this Court.

(iv) The objections raised by Mr. Vales, including in particular, the objection noted in paragraph 19 of this judgment and order, are specifically kept open for determination by the Appeal Court.

(v) The M.C.A No.175/2016 for bringing on record legal representatives of some of the respondents is disposed of with liberty to move such application before the Appeal Court, now that all such issues are kept open before the Appeal Court.

(vi) Nothing in this order should be construed as dispensation to the appellants from taking steps to ensure that there are procedural compliances within a reasonable period of eight weeks. If there is delay, it will be for the appellants to explain such delay by taking out appropriate applications seeking condonation of delay. However, the period between making of impugned orders and the period ending within eight weeks of the date of the present judgment and order, shall be either excluded or treated as validly explained for such purpose.

3. It is contended by the learned Counsel for the applicant that after the said order was passed, Advocate Ms. Marushka De Monte Furtado, who was representing the petitioner, had proceeded to London on 06.05.2017 and she returned on 31.05.2017. The said Advocate has filed an affidavit stating that on account of her travel abroad, the order passed in

the Writ Petition, was not communicated to the petitioner, as a result of which, the petitioner could not deposit the costs. On account of the conditional order, the Appeal stood dismissed. The applicant has filed this application for grant of six weeks time to deposit the costs and for restoration of the Appeal.

4. The respondent nos. 1(ai) to 1(h), have filed a reply opposing the application. It is contended that once the conditional order has become operative, no further extension can be granted. It is contended that the ground for extension is vague and is not sufficient. It is contended that after the passing of the order on 17.04.2017, the Advocate for the petitioner had proceeded abroad on 06.05.2017 and in the meantime, the order could have been communicated.

5. I have heard Shri Padgaonkar, the learned Counsel for the applicant and Ms. Pednekar, the learned Counsel for the respondents. With the assistance of the learned Counsel for the parties, I have gone through the record.

6. Under Section 148 of CPC, the Court can enlarge the time fixed or granted for doing of any act, even though, the period originally fixed or granted, has expired. On behalf of the

applicant, reliance is placed on the decision of the Supreme Court in the case of **D.V. Paul Vs. Manisha Lalwani, (2010) 8 SCC 546**, in order to submit that such extension, in an appropriate case, can be beyond the period of 30 days. In other words, it is contended that the extension beyond the maximum period of 30 days is permissible. It is contended that the fact that it was a conditional order, would not be decisive and if, sufficient reasons explaining the delay are made out, the Court can always extend time.

7. On the contrary, it is submitted by the learned Counsel for the respondents that the application, as noticed earlier, does not make any sufficient grounds as such. It is submitted that the Advocate for the petitioner had gone abroad 15 days, after passing of the order, which was sufficient time to communicate the order to the petitioner. The learned Counsel for the respondents has made an alternate submission that in the event, this Court is inclined to grant time, some additional costs may be imposed.

8. The learned Counsel for the applicant, in all fairness, submits that this Court may pass appropriate orders with regard to imposing of additional costs.

9. I have carefully considered the rival circumstances and the submissions made. As noticed earlier, under Section 148 of CPC, this Court in an appropriate case, can grant time for doing of the act and in the present case, it is deposit of costs of Rs.1 Lakh. The Supreme Court in the case of **D.V. Paul** (supra), has *inter alia* held that there is nothing under Section 148 of CPC or in any other provisions of CPC to suggest that the power of extension of time, cannot be exercised after expiry of the original period. It has been held that Section 148 of CPC, clearly reserves in favour of the Court, the power to enlarge the time required for doing an act and the extension beyond the maximum period of 30 days is permissible. It has also been held that the order fixing the time, being a conditional order, would not make any distinction (see paragraph 32).

10. Reverting back to the present case, the only ground is that Advocate Ms. Furtado had proceed abroad from 06.05.2017 to 31.05.2017 and as such, could not communicate the order to the petitioner. It is true that Writ Petition No. 378/2009 was decided by this Court on 17.04.2017 and Advocate Ms. Furtado had gone abroad about two weeks thereafter. However, such a contention cannot be appreciated on a mathematical precision

and the Court is required to take a broad view of the matter. It is well settled that, the lapse on the part of the Counsel appearing for the party, may not prejudice the party. Considering the overall circumstances, a case for extension of time is made out. It would be appropriate to further direct the applicant to deposit an additional amount of Rs.50,000/- as costs. The learned Counsel for the applicant states that the applicant shall deposit the amount by 13.09.2017.

11. In the result, the following order is passed:

ORDER

(a) The applicant shall deposit Rs.1,50,000/- before this Court, latest by 13.09.2017.

(b) Out of the said amount of Rs.1,50,000/-, Rs.75,000/- shall be paid to the respondent nos. ~~1(i)~~^{1(ai)}, 1(b), 1(bi) and 1(d), while the remaining amount of Rs.75,000/- shall be paid to the original defendants in the suit or their legal representatives (other than the above respondents).

(c) Needless to mention that in the event of failure to deposit the amount, the original order of dismissal of Appeal shall stand.

(d) The Civil Application is disposed of in the aforesaid terms.

*Necessary
correction carried
out in terms of
Order dated
09.12.2017*

(e) Parties to act on an authenticated copy of the order.

C.V. BHADANG, J.

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