

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 656 2017**

1. Mr. Tukaram Pandurang Sawant,
Son of late Shri Pandurang Sawant,
Aged 74 years, Indian National and
R/o H. No.129, Sarvan, Bicholim-Goa.
2. Mrs. Sitabai Tukaram Sawant (since deceased)
Wife of Shri Tukaram Sawant,
Aged 67 years, Housewife, Indian National,
R/o H. NO.129, Sarvan, Bicholim-Goa,
Represented by her Husband,
Duly Constituted Attorney,
Shri Tukaram Pandurang Sawant.
- 2 (i) Mr. Naresh Tukaram Sawant.
- 2 (ii) Mrs. Poonam Naresh Sawant.

Both R/o Shantadurga Apartments,
Flat No.51, Bicholim-Goa.
- 2 (iii) Mr. Umesh T. Sawant.
- 2 (iv) Mrs. Utkarsha Umesh Sawant.
- 2 (v) Mr. Mahesh T. Sawant.
- 2 (vi) Mrs. Manisha M. Sawant.

All R/o Rukmin Nivas,
Sarvan, Bicholim-Goa.
- 2 (vii) Mrs. Medha Prakash Gad.
- 2 (viii) Mr. Prakash Gad,
Both R/o Flat No.106-C,

Pooja Complex, Sector 17,
Opp. Railway Station,
Mumbai, Maharashtra

.... Petitioners

V e r s u s

1. Mrs. Parvati Venkatesh Sawant (since deceased) (amendment carried out
vide order dtd.20.9.17.)

W/o late Shri Ventakesh Sawant,
Aged 68 years, Housewife, Indian National,
R/o H. NO.25, Codal, Karapur,
Bicholim-Goa.

2. Mrs. Surekha Suresh Gad,
D/o late Shri Venkatesh Sawant,
Aged 54 years and her husband,

3. Mr. Suresh Tukaram Gad,
Son of Tukaram Gad,
Major in age, Both R/o Flat No.S-1,
Boshan House, Near Bodgeashwar Temple,
Mapusa-Goa.

4. Mr. Tulshidas Venkatesh Sawant,
Son of late Shri Venkatesh Sawant,
Aged 52 years, married, business,
Power of Attorney Holder of Respondent
No.1-3 and 5-7.

5. Mrs. Manisha Tulshidas Sawant,
Wife of Mr. Tulshidas Sawant,
Aged 50 years, Housewife,

Both R/o H. No.24,
Codal, Karapur, Bicholim-Goa.

6. Mr. Subash Venkatesh Sawant,
Son of late Shri Venkatesh Sawant,
Aged 48 years, Married, Business,
and his wife.

7. Mrs. Suvarna Subhash Sawant,

Wife of Mr. Subhash Sawant,
Aged 44 years, Housewife,

Both R/o H. No.25, Codal,
Karapur, Bicholim-Goa.

8. Mr. Hemant Krishnanath Malwankar,
Son of Shri Krishnanath Malwankar,
Major of age, Married Service and his wife,

9. Mrs. Hemant Malwankar,
Wife of Mr. Hemant Malwankar,
Major in age, Married,

Both R/o Moica wada, Pilerne,
Bardez-Goa.

..... Respondents

(The above are the registered addresses of the parties concerned)

Shri Deepak Goankar, Advocate for the Petitioners.

Shri S. Narvekar, Advocate for the Respondent nos.1 to 7.

CORAM: C. V. BHADANG, J.
DATE: 22ND NOVEMBER, 2017.

ORAL ORDER

On 25/7/2017 a notice for final disposal was issued in this case. I have accordingly heard the learned counsel for the parties and the petition is being disposed off finally.

2. The challenge in this petition under Article 227 of the Constitution of India is to the order dated 31/3/2017 passed by the learned Adhoc District Judge, Mapusa, thereby condoning the delay of 74 days in filing an appeal.

3. The brief facts are that the petitioners, who are the defendants before the trial court have suffered an order of temporary injunction dated 8/9/2015 passed by the learned trial court in Regular Civil Suit No.110/2013/B on the file of the learned Civil Judge, Junior Division at Bicholim. The respondents were desirous of challenging the impugned order in an Appeal before the learned District Judge, in which there was a delay. The respondents, therefore, filed an application for condonation of delay on 21/1/2016. The respondent nos. 1 to 3 and 5 to 9 were represented by the respondent no.4, who is their Power of Attorney. The case made out in the application was that Advocate V. Jog was appearing for the respondents. However, on the day of the pronouncement of the order dated 8/9/2015, Advocate Jog as well as the respondents were absent. It was contended that the suit which was of the year 2013 was not being attended regularly by the respondents personally and were attending the same as and when asked by Advocate Jog. It was the material case that the respondent no.4 due to his personal difficulty could not contact Advocate Jog from September till

November 2015 and on account of this communication gap, the respondents were not aware of the pronouncement of the order dated 8/9/2015. Ultimately the respondent no.4 approached the advocate in the last week of December 2015, only to learn that the application for temporary injunction was granted. It was further contended that Advocate Jog refused to file the appeal and it was then entrusted to Advocate Narvekar who filed the appeal in the first week of January 2016, by which time, it was barred by limitation by 74 days. In short, according to the respondents, the sole ground on which condonation of delay was sought for was that the respondents were not aware of the passing of the order.

4. The application was opposed on behalf of the petitioners. It was contended that the petitioners were aware of the passing of the order and no sufficient cause has been made out.

5. The learned trial court by the impugned order found that sufficient cause has been made out and proceeded to condone the delay as according to the learned trial court, there were no malafides attributable to the respondents. Feeling aggrieved, the petitioners are before this Court.

6. It is submitted by the learned counsel for the petitioners that the

respondents and more particularly, the original defendant no.4 (respondent no.4), who was their Power of Attorney was not aware of the passing of the order, which would be clear from the application dated 18/11/2015 filed for extension of the date of the certified copy. It was thus contended that the ground was false to the knowledge of the respondents and this is sufficient to deny an order for condonation of delay.

7. On behalf of the petitioners reliance is placed on the decision of this Court in the case of **Mr. Bolu Bandodkar Vs. Diana Zita Agnela D'Souza e Martyres & Ors. 2015 (6) ALL MR 395** and on the decision of **Mr. Joao Fernandes Vs. Mr. Francisco Xavier Jacques and anr. (W.P, No.285 of 2013 decided on 20/6/2013)**. Reliance is also placed on the decision of the Supreme Court in the case of **Esha Bhattacharjee Vs. Managing Committee of Raghunathpurt Nafar Academy & Others (2013) ALL SCR 3236**.

8. On the contrary it is submitted by the learned counsel for the respondents that there was no intentional and willful suppression on the part of the respondents. The respondents have filed an affidavit of respondent no.4 Tushidas V. Sawant, in which he claims that there was inadvertent error committed by him as he is uneducated and a layman. He, therefore, submits

that once the learned District Judge has exercised the discretion in condoning the delay, this Court may not interfere.

9. I have carefully considered the circumstances and the submissions made. The Supreme Court in the case of **Esha Bhattacharjee (supra)** after taking a survey of the various decisions holding the field has culled out the principles which are germane while considering the case for condonation of delay, in paras 21 and 22 of the judgment. In particular as per para 21.10 the Supreme Court has held that if the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

10. It can thus be seen that the fact that the explanation offered was either concocted or false could be a ground germane to refuse the prayer for condonation of delay. A similar view has been expressed by this Court in the case of **Joao Fernandes (supra)**, in which, the condonation of delay was sought on the ground of the illness of the advocate which was found to be false. This Court, therefore, while interfering with the order of condonation of delay had refused to condone the same. It is not necessary to multiply authorities on the point. However, again in the context of a similar situation,

where the ground was found to be incorrect, this Court refused to condone the delay in the case of **Bolu Bandodkar (supra)**.

11. Coming back to the present case, the only ground raised was that the respondent no.4 who was looking after the suit on behalf of the other respondents, was unaware of the passing of the order, which is entirely belied by the application to extend the date of the certified copy filed by respondent no.4 on 18/11/2015. It can thus be seen that the respondent had made an attempt to obtain an order for condonation of delay on the ground which to his knowledge was false and if the principles as laid down by the Supreme Court in the case of **Esha Bhattacharjee (supra)** are applied, the respondents are not entitled for an order of condonation of delay. A perusal of the impugned order shows that this aspect has not at all been considered by the learned trial court. Although normally this Court would be slow in interfering with an order of the present nature where the respondents are found to have sought condonation of delay on a palpably false ground (which aspect has not been considered by the trial court) interference would be necessary. The petition is accordingly allowed. The impugned order is hereby set aside. The application for condonation of delay is dismissed. However considering the fact that an order of temporary injunction is operating against the respondents, and further having regard to the fact that the suit is of the

year 2013 (which is said to be ripe for hearing), I direct that the learned trial court shall decide the suit as expeditiously as possible and preferably within a period of one year from the receipt of this order.

C. V. BHADANG, J.

Ap/