

**IN THE HIGH COURT OF BOMBAY AT GOA****WRIT PETITION NO. 90 OF 2012**

1. Shri Vijay Vishwasrao Chowgule,
2. Shri Ashok Vishwasrao Chowgule;
3. Shri Umaji Vishwasrao Chowgule,
4. Smt. Sarita Vishwasrao Chowgule,
5. Kum. Rohini Vishwasrao Chowgule,
6. Smt. Padma Vishwasrao Chowgule,

All major, represented by their  
duly constituted Attorney  
Ramesh @ Rama Bilguche,  
residing at Anukul, A-1,  
Vidhya Nagar, Zuari Nagar, Goa.

.... Petitioners.

V/s

1. The State of Goa,  
through the Deputy Conservator  
of Forests, North Goa Division,  
Ponda, Goa.

2. Range Forest Officer,  
Collem Range, Collem,  
Sanguem Taluka, Goa.

3. Forest Settlement Officer (North),  
Valpoi, Goa.

..... Respondents.

Mr. S. D. Lotlikar, Senior Advocate with Mr. C. Padgaonkar,  
Advocate for the petitioners.

Ms. P. Kamat, Additional Government Advocate for the  
respondents.

**CORAM :- M. S. SONAK, J.**

**Date : - 09/05/2017.**

**ORAL JUDGMENT**

Heard Mr. S. D. Lotlikar, learned Senior Advocate for the petitioners and Ms. P. Kamat, learned Additional Government Advocate for the respondents.

2. The challenge, in this petition, is to the Order dated 28th June, 2011 made by the Forest Settlement Officer (North), Valpoi-Goa.

3. Shri V. D. Chowgule, the predecessor-in-title of the present petitioners, was the claimant in case No.PRF/COL/1/(G)218/2001(1)/2003/16. Before the Forest Settlement Officer (North), Valpoi-Goa, the claim of the petitioners was that the suit property should be excluded from the declaration as "reserved forest". Shri V. D. Chowgule died on 4th October, 2008 as per the Death Certificate produced on record. It is only on 21st January, 2010, the present petitioners who are, admittedly, legal

representatives of the late V.D. Chowgule, applied for bringing themselves on record and to pursue the claim before the Forest Settlement Officer. By the impugned Order dated 28th June, 2011, the Forest Settlement Officer had, inter alia, held that there is negligence and consequently, no sufficient cause to condone the delay in permitting the present petitioners to come on record and pursue their claim.

4. Mr. S.D. Lotlikar, learned Senior Advocate for the petitioners submits that the provisions of Order XXII of the Code of Civil Proceedings which have been applied by the Forest Settlement Officer are not at all attracted to the proceedings before the Forest Settlement Officer. In any case, he submits that when the limitation in such matters would be three years, since residuary clause would apply and, therefore, there was no delay. He submits that the application seeking condonation of delay was made as a matter of abundant caution. In any case, Mr. Lotlikar submits that sufficient cause was shown and the same, in the matter of this nature, was required to be construed with liberality. On these grounds, Mr. Lotlikar, submits that the impugned order

may be set aside.

5. Ms. P. Kamat, learned Additional Govt. Advocate defends the impugned order. She submits that there is no sufficient cause shown and, therefore, there is no case made out to interfere with the discretion exercised by the Forest Settlement Officer.

6. Upon due consideration of the rival contentions, and on perusal of the impugned order, as well as the material on record, I am satisfied that the impugned order is required to be set aside, subject to, however, payment of costs

7. In this case, there is no necessity to go into the issue as to whether the provisions of Order XXII of C.P.C. would apply or whether the residuary clause which provides for 3 years, would attract. This is because, although the application for bringing the legal representatives of the deceased on record was made about 2 years after the date of demise of V.D. Chowgule, there is sufficient cause shown by the petitioners. The petitioners, apparently, have

nothing to gain by delaying the proceedings of this nature. The petitioners have stated that they had engaged an Advocate and had given authority letter to their representative to represent them. The track of the matter was lost and it is only after some communication was received from the Mines and Geology Department that it was realised that steps were required to be taken.

8. In the case of ***Sadar Amarjit Singh Kalra (dead) By Lrs. and others Vs. Pramod Gupta (Smt) (Dead) By LRS. and Others*** (2003) 3 SCC 272, the Hon'ble Supreme Court, in the context of delay in bringing on record the legal representatives, has made the following observations:

“A careful reading of the provisions contained in Order 22 of CPC as well as the subsequent amendments thereto would lend credit and support to the view that they were devised to ensure their continuation and culmination into an effective adjudication and not to retard the further progress of the proceedings and thereby non-suit the others similarly placed as long as their distinct and independent rights to property or any claim remain in tact and not lost forever due to the death of one

or the other in the proceedings. *The provisions contained in Order 22 are not to be construed as a rigid matter of principle but must ever be viewed as a flexible tool of convenience in the administration of justice.*

*Laws of procedure are meant to regulate effectively, assist and aid the object of doing substantial and real justice and not to foreclose even an adjudication on merits of substantial rights of citizen under personal, property and other laws. Procedure has always been viewed as the handmaid of justice and not meant to hamper the cause of justice or sanctify miscarriage of justice. With the march and progress of law, the new horizons explored and modalities discerned and the fact that the procedural laws must be liberally construed to really serve as handmaid, make it workable and advance the ends of justice, technical objections which tend to be stumbling blocks to defeat and deny substantial and effective justice should be strictly viewed for being discouraged, except where the mandate of law inevitably necessitates it.”*

(Emphasis supplied)

9. In this case, it cannot be said that the cause shown was either not sufficient or smacks of any lack of bonafides. In this case, it also cannot be said that the delay was in furtherance of

some strategy to protract the proceedings. No doubt, the petitioners could have acted with greater diligence, however, that is no ground not to condone the delay, rather, there is a ground to condone the delay, after imposition of costs.

10. Therefore, upon cumulative consideration of the circumstances on record, and accepting that the cause shown was indeed sufficient, the impugned order is set aside. The order shall, however, be subject to payment of costs of Rs.25,000/- within four weeks.

11. Mr. Lotlikar, learned Senior Advocate for the petitioners states that the costs may be directed to be paid to “*Matruchaya*”, Dhavli, Ponda, Goa which is an NGO, established to take care of destitute children. Ms. Kamat, learned Additional Govt. Advocate states that she has no objection if this course of action is followed.

12. Accordingly, the costs of Rs.25,000/- to be paid within a period of four weeks from today to “*Matruchaya*”, Dhavli,

Ponda, Goa. Receipt of such payment to be produced before the Forest Settlement Officer (North), Valpoi, Goa. The Forest Settlement Officer to permit the petitioners to come on record in the present proceedings before him and thereafter to dispose of the proceedings in accordance with law and on their own merits. All contentions of all the parties are left open for determination by the Forest Settlement Officer.

13. Rule is made absolute, with costs, as aforesaid.

**M.S. SONAK, J.**

**ssm.**