

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 788 OF 2016**

Mrs. Joanita Gonsalves, w/o late Mr. Joao Tedorio Gonsalves, aged 57 years, agriculturist, r/o H. No. 155, Vithalamordi, Quepem, Goa.

.... Petitioner

Versus

1. Smt. Antoneta D'Costa e Gonsalves, w/o Mr. Robert Alvares Gonsalves, Major of age, housewife, and her husband,

2. Mr. Robert Alvares Gonsalves, s/o late Josinho Gonsalves, major of age, service,
Both r/o H.No.150, Vithalamordi, Quepem, Goa.

3. Mr. Evaristo Minguel Caetano Pereira, s/o John Peter Pereira, aged 71 years,

4. Mrs. Vicky Mary Pereira, w/o Mr. Evaristo Minguel Caetano Pereira, aged 64 years, housewife, both r/o Sonarbhat, Quepem, Goa.

} Deleted as per
Order dated
23.01.2017

5. Smt. Coral Pereira, w/o late Mr. Cancio Mariano Pereira, aged 61 years and her daughter,

6. Smt. Schoron Ann Lacerda, w/o Christopher Lacerda, aged 35 years, and her husband,

7. Mr. Christopher Lacerda, aged 39 years,
8. Ms. Amanda Ann Pereira, d/o late Shri Cancio Mariano Pereira, aged 39 years, All r/o H. No. 201, Edelweiss Orlem Marve Road, Malad West, Mumbai 400 064.
9. Mr. Natalino Carvalho (deceased and deleted)
10. Smt. Santana Carvalho, aged 68 years, housewife, r/o H.No. 11, Copelabhat, Deao, Quepem, Goa.
 - a) Voton alia Antoneite Carvalho, major in age, Indian National, r/o H.No. 196, Bamnabhat, Ambaulim, Quepem, Goa.
 - b) Esperenca Carvalho, major in age, Indian National, r/o H.No. 471/2, Chinchiwada, Ambaulim, Quepem, Goa.
 - c) Piedade Carvalho, major in age, Indian National, r/o H.No. 142/3, Goval, Pardao, Cotombia, Xeldem, Goa.
 - d) Pobrin Carvalho, major in age, Indian National, r/o 1056, Gotmorod, Cacora, Quepem, Goa.
 - e) Dumian Carvalho, major in age, Indian National, r/o H.No. 11, Copelabhat, Deao, Quepem, Goa.

11. Mr. Alex Carvalho, s/o late Mr. Joao Carvalho, aged 53 years, and his wife,
12. Smt. Santana Dias e Carvalho, w/o Mr. Alex Carvalho, major of age, housewife, Both r/o H. No. 15, Bindimol, Copelabhat, Deao, Quepem, Goa.
13. Smt. Dulcina Cardozo e Fernandes (deceased) and her son,
14. Mr. Caetano Fernandes, s/o late Mr. Jose Fernandes, aged 46 years, businessman, and his wife,
15. Smt. Fatima Fernandes, aged 42 years, housewife, All r/o Covatem, Ambaulim, Quepem, Goa.
16. Shri Joaquim Santan Fernandes, s/o late Jose Fernandes, aged 44 years and his wife,
17. Smt. Sebastiana D'Costa, aged 38 years, housewife, Both r/o Covatem, Copelabhat, Quepem, Goa.
18. Smt. Sabina Fernandes, aged 38 years, and her husband,
19. Mr. Casmiro Fernandes, s/o Paulo Fernandes, aged 44 years, businessman, Both r/o Asagal, Copelabhat, Quepem, Goa.

.... Respondents

Mr. John Abreu Lobo, Advocate for the Petitioner.

Mr. R.G. Ramani, Advocate for Respondent Nos. 5 to 8.

CORAM:- C. V. BHADANG, J.

DATE:- 23rd JANUARY, 2017

ORAL JUDGMENT:

The learned Counsel for the petitioner, on instructions, seeks leave to delete respondent nos. 3 and 4, as they were ex-parte before the Trial Court.

2. The deletion is permitted at the risk of the petitioner. The deletion to be carried out forthwith.

3. Rule made returnable forthwith.

4. Mr. Ramani, the learned Counsel for the contesting respondent nos. 5 to 8, waives service. Heard finally by consent of parties.

5. In a suit filed by the petitioner, a issue of tenancy was framed and the matter was referred to the Mamlatdar. The

learned Mamlatdar by an order dated 20.12.2013, dismissed the reference in default of the petitioner.

6. According to the petitioner, the petitioner came to know of the said order on 06.05.2014, on receipt of summons in the suit. On 12.05.2014, the petitioner filed an application before the learned Mamlatdar for restoration of the reference alongwith an application for condonation of delay. The learned Mamlatdar by an order dated 16.06.2014, dismissed the application for condonation, as well as the one for restoration, on the premise that the applicant has to approach the learned District Judge, where the suit was pending. Hence, the petitioner approached the learned District Judge. The learned District Judge by an order dated 08.10.2014, found that the application is not maintainable and as the proceedings were dismissed by the Mamlatdar, the petitioner has to approach the appropriate Authority to seek redressal of her grievance.

7. The petitioner sought to challenge the order passed by the Mamlatdar, before the learned District Judge (as in the

meantime, the jurisdiction to entertain the revision application by the Mamlatdar was conferred on the District Judge). It appears from the record that the revision application was filed on 21.11.2014. An office objection was raised on the ground of limitation. Hence, the petitioner filed an application for condonation of delay in filing the revision application on 27.05.2015. According to the petitioner, the delay was of 92 days as the petitioner computed the delay upto the date of filing the revision application i.e. 21.11.2014

8. The learned District Judge came to the conclusion that the delay is of 250 days, which was computed on the basis of the date of filing of the application for condonation of delay. The learned District Judge also found that the petitioner has not made out a case for condonation and has dismissed the application by order dated 13.07.2016, which is subject matter of challenge in this petition.

9. I have heard Mr. Lobo, the learned Counsel for the petitioner and Mr. Ramani, the learned Counsel appearing for the

respondent nos. 5 to 8. With the assistance of the learned Counsel for the parties, I have gone through the record and the impugned order passed.

10. In the present case, the challenge is only to the order refusing to condone the delay in filing the revision application. It is a matter of record that the revision application was filed on 21.11.2014, however, on account of an office objection being raised, the application for condonation of delay was filed on 27.05.2015. The question is whether, the delay has to be computed as on the date of filing of the revision application or on the basis of the date of filing of the application for condonation of delay.

11. It is submitted by Mr. Ramani, the learned Counsel for respondent nos. 5 to 8 that the revision application was not registered as it was under office objection. Thus, the delay has to be computed upto the date of filing of the application for condonation of delay.

12. I have carefully considered the rival circumstances and the submissions made. In my considered view, once the revision application was filed in the Court, merely because the same was not registered, would not make any difference. It is true that the petitioner could have promptly filed the application for condonation of delay on the objection being raised. However, the facts remains that when the revision application was filed, there was delay of 92 days. It is now well settled that in case of delay of short duration, the Court can take a liberal view in the matter (see the case of **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and Others, (2013) 12 SCC 649**) and no party stands to gain by approaching the Court late (see the case of **Collector, Land Acquisition, Anantnag & Another Vs. Mst. Katiji, (1987) 2 SCC 107**). Considering the overall circumstances, I find that the delay in filing the revision application deserves to be condoned, subject to appropriate costs.

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

(a) The Writ Petition is allowed.

(b) The impugned order dated 13.07.2016, is hereby set aside, subject to costs of Rs.5,000/-, payable to respondent nos. 5 to 8.

(c) The costs to be deposited before the District Judge.

(d) The learned District Judge shall cause the revision application to be registered and shall decide the same on its own merits, in accordance with law.

(e) Petition is disposed off in the aforesaid terms.

C. V. BHADANG, J.

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