

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 822 OF 2015

SHRI.TEOTONIO PEREIRA, THROUGH
ATTORNEY MR.MAGNO PEREIRA. ... Petitioner

Versus

SHRI.JULIO ABREU (SINCE DECEASED)
THROUGH LEGAL REPRESENTATIVES., ... Respondent

Adv. Ashwin D. Bhobe for the Petitioner.
Adv. J.P. Mulgaonkar for the Respondent nos.1,2,4,5,6 & 8.

Coram:- C. V. BHADANG, J.

Date:- 4th October 2017

P.C.:

The challenge in this petition is to the order dated 24/5/2015 passed by the learned Administrative Tribunal in Eviction Appeal No.84/2003. By the impugned order, two applications i.e application dated 22/4/2009 (filed on 10/8/2009) and the application dated 10/12/2010 seeking setting aside of the abatement of the appeal along with condonation of delay and for bringing the legal representatives of the original deceased respondent on record have been dismissed.

2. The brief facts are that; now deceased, Julio Abreu has obtained an order of eviction of the petitioner, from the subject premises, which order was challenged by the petitioner before

the Administrative Tribunal in the Eviction Appeal No.84/2003. The appeal was filed on 25/4/2003. It appears that the original respondent, Julio Abreu passed away on 2/2/2004 in Canada. The Attorney of the respondent, by an application, informed the same on 9/2/2009 including the names of the legal representatives of Julio. On behalf of the petitioner an application came to be filed on 10/8/2009 and yet another application on 10/12/2010 for bringing the legal representatives of the deceased respondent on record, along with an application for condonation of delay and setting aside abatement. Both these applications have been dismissed. The appeal is also dismissed as abated, which order is subject matter of challenge in this petition.

3. I have heard Shri Bhobe, the learned counsel for the petitioner and Shri Mulgaonkar, the learned counsel for the respondents no.1,2,4,5,6 & 8. Perused record.

4. It is contended on behalf of the petitioner that from 9/2/2009, i.e the date on which the attorney informed about the death of the respondent, there is a delay of 121 days in filing the application. It is submitted that there are no malafides shown on behalf of the petitioner in not bringing the legal representatives on record within time. It is submitted that the petitioner does not stand to gain by approaching the Court late. Reliance is placed on para 26

of the judgment in the case of SARDAR AMARJIT SINGH KALRA (DEAD) BY LRS. AND OTHERS VS. PRAMOD GUPTA (SMT) (DEAD) BY LRS AND OTHERS. (2003) 3 SCC 272, in order to submit that rules of procedure are meant to advance substantial and real justice and not to foreclose an adjudication on merits.

5. On the contrary, it is submitted by Shri Mulgaonkar, the learned counsel for the respondents, that the entire attitude of the petitioner in prosecuting the appeal has been casual. The application is neither supported by an affidavit nor by a medical certificate. It is submitted that the contents of para 1 of the application dated 10/12/2010 are also not correct, inasmuch as it was the final order of the Rent Controller which was challenged in the appeal and not the order dated 4/2/2003 as mentioned in para 1 of the said application. It is contended that even the reasons shown in the application that the petitioner was not aware of the names of the legal representatives is incorrect.

6. I have carefully considered the rival circumstances and the submissions made and I do not find that any case for interference is made out. It is now well settled that while considering a prayer for condonation of delay, the Court has to see whether sufficient cause for not taking necessary steps within time has been made out. The existence of such 'sufficient cause', is a *sine qua non* for

exercising the discretion. In the present case, the respondent died on 2/2/2004 which was informed by the Attorney by an application on 9/2/2009. A perusal of the said application clearly shows that the names of the legal representatives were also mentioned in the said application. Thus the petitioner cannot be heard to say that the delay was occasioned on account of fact that the petitioner was unaware of the names of the legal representatives. The circumstances do not show that the petitioner has acted with due diligence. The Tribunal has found that the application which was filed on 10/2/2010 was prepared on 22/4/2009 and there is no reason why it was not filed earlier. Yet another ground for seeking condonation was about illness of the petitioner. There again, the application is neither signed by the petitioner, or his attorney, nor it is supported by an affidavit or a medical certificate. I have carefully gone through the impugned order and I do not find that it suffers from any infirmity so as to require interference under Article 227 of the Constitution of India.

7. The principles as laid down in the case of Sardar Amarit Singh (*supra*) cannot be disputed. However, the question whether a sufficient cause has been made or not is individual to the facts and circumstances of each case. In the present case, it is apparent that the petitioner has failed to demonstrate sufficient cause for not filing the application for bringing the legal representatives

on record earlier and within time of 60 days as required by Rule 12 of the Goa, Daman and Diu Building (Lease, Rent and Eviction Control) Rules 1969. The petition is without any merit and is accordingly dismissed, with no order as to costs.

C. V. BHADANG, J.

ap/-