IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 784 OF 2017

Mr. Anant Gopinath Kessarkar, S/o late Shri Gopinath Kessarkar, 55 years of age, business, R/o H. No. 329, 'Gopinath', Aquem, Margao-Goa. .... Petitioner

Versus

1. Shri Suresh Mangilal Prajapat, S/o late Shri Mangilal Piranji Prajapat, r/o 'Hari Om', Shantinagar, Rawonfond, Navelim – Salcete, Goa.

2. The Chairperson, Margao Municipal Council, Margao-Goa. .... Respondents

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Shri Sahish Mahambrey, Advocate for the Petitioner.

Shri Shambhu Satchidanand Kakodkar, Advocate for the Respondent No. 1.

CORAM:- C.V. BHADANG, J.

DATE:- 19th SEPTEMBER, 2017.

ORAL JUDGMENT:

On 05.09.2017, a notice for final disposal was issued in this case. I have accordingly heard the learned Counsel for the petitioner and the learned Counsel for the respondent no. 1. None appears for the respondent no. 2, though served.

2. The petitioner is challenging the order dated 17.08.2017, by which the respondent no. 2 has condoned the delay of about four months in filing an appeal. That appeal, is

filed by the respondent no. 1. It is contended by the learned Counsel for the petitioner that the order sheet dated 07.07.2017 shows that the argument on application for condonation of delay was partly heard and the application was fixed for further arguments on 20.07.2017. On that day, on account of the Presiding Officer being preoccupied, the matter was adjourned to 17.08.2017. The order sheet of 17.08.2017 shows that the application for condonation of delay came to be allowed, directing the parties to file the written arguments. It is thus contended that when, the application was partly heard, the same could not have been allowed without affording further hearing and secondly, by the impugned order the opportunity of oral hearing is denied to the petitioner in the Appeal.

3. The learned Counsel for the respondent no. 1 has supported the order. It is submitted that the delay is only of four months and 13 days and as such, the same has rightly been condoned.

4. I have carefully considered the rival circumstances and the submissions made. The order sheets dated 07.07.2017 and 20.07.2017, would make it clear that on 07.07.2017, the application for condonation of delay was partly heard and on the

next date i.e. 20.07.2017, there was no further hearing on account of the Presiding Officer being preoccupied. Hence, the matter was adjourned to 17.08.2017, on which date, the application for condonation of delay is shown to be allowed straightway. In my considered view, such a procedure cannot be countenance. Unless the hearing is completed, no order could have been passed. In such circumstances, it would be appropriate to send the application for condonation of delay back to the respondent no. 2, as there appears to be a clear breach of principles of natural justice.

5. Hence, the following order is passed:

O R D E R

(a) The petition is partly allowed.

(b) The impugned order dated 17.08.2017, is hereby set aside.

(c) The application for condonation of delay is restored to the file of the respondent no. 2, for disposal in accordance with law after hearing the parties.

(d) The parties to appear before the respondent no. 2 on 03.10.2017 at 3:00 p.m.

(e) The petition is disposed of in the aforesaid terms, with no order as to costs.

C.V. BHADANG, J.

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