

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEALS NO.45 & 46 OF 2011

SECOND APPEAL NO. 45 OF 2011

1. Shri Krishna H. Kavlekar,
(since deceased) through legal heirs,
(i) Smt. Shubhalaxmi Krishna Kavlekar,
wife of late Krishna H. Kavlekar,
aged 60 years,
(ii) Miss Vandita Krishna Kavlekar,
daughter of late Krishna H. Kavlekar,
aged 30 years,
(iii) Gourish Krishna Kavlekar (son)
son of late Krishna H. Kavlekar,
aged 28 years.

All residents of Near People's High School,
Fontainhas, Mala, Panaji, Goa.

2. Shri Bharat H. Kavlekar,
aged 58 years,
c/o. Casa Ganesh, Shridhar Bldg.,
next of Vishva Surya Paper Agent,
Vasco-da-Gama, Goa.

3. Shri Shriram H. Kavlekar,
aged 50 years, resident of Near People's
High School, Fontainhas,
Mala, Panaji, Goa.

..... Appellants.

V/s.

1. Shri Prakash H. Kavlekar,
resident of near People's High School,
Fontainhas, Mala, Panaji, Goa.

2. Shri Pradeep H. Kavlekar,
resident of near People's High School,
Fontainhas, Mala, Panaji, Goa.

..... Respondents.

SECOND APPEAL NO. 46 OF 2011

1. Shri Krishna H. Kavlekar,
(since deceased) through legal heirs,
(i) Smt. Shubhalaxmi Krishna Kavlekar,
wife of late Krishna H. Kavlekar,
aged 60 years,
(ii) Miss Vandita Krishna Kavlekar,
daughter of late Krishna H. Kavlekar,
aged 30 years,
(iii) Gourish Krishna Kavlekar (son)
son of late Krishna H. Kavlekar,
aged 28 years.

All residents of Near People's High School,
Fontainhas, Mala, Panaji, Goa.

2. Shri Bharat H. Kavlekar,
aged 58 years,
c/o. Casa Ganesh, Shridhar Bldg.,
next of Vishva Surya Paper Agent,
Vasco-da-Gama, Goa.

3. Shri Shriram H. Kavlekar,
aged 50 years, resident of Near People's
High School, Fontainhas,
Mala, Panaji, Goa.

..... Appellants.

V/s.

1. Shri Pradeep H. Kavlekar,
resident of near People's High School,
Fontainhas, Mala, Panaji, Goa.

2. Shri Prakash H. Kavlekar,
resident of near People's High School,
Fontainhas, Mala, Panaji, Goa.

..... Respondents.

Mr. Sudin Usgaonkar, Senior Advocate with Mr. K. Padgaonkar,
Advocate for the appellants.

Mr. Thalman Pereira, Advocate for the respondents.

CORAM :- F.M. REIS, J.

Date :- 20th July, 2017

ORAL JUDGMENT :-

Both the above appeals were taken up together, as pointed out by the learned Counsel for the respective parties that the issues involved are identical and the impugned Judgment is a common Judgment in both the two suits filed by the respondents against the respective appellants.

2. Heard Shri Sudin Ugaonkar, learned Senior Counsel appearing for the appellants and Mr. T. Pereira, learned Counsel appearing for the respondents.

3. Both the appeals came to be admitted by an order dated 8th August, 2011, on the following substantial question of law :

Whether on the facts and circumstances of the case, the impugned order passed by the District Judge (I), Panaji, refusing to condone the delay of 467 days in filing First Appeal is perverse ?

4. Mr. Sudin Usgaonkar, learned Senior Counsel appearing for the appellants submits that the impugned Judgments were passed on 28/11/2008, whereby the suits filed by the respondents came to be decreed. It is further pointed out that the impugned Judgments were passed considering the pecuniary jurisdiction as was then prevailing. The appeals were not registered as office objections were not cleared and the matters came up before this Court on 15/09/2009. It is further submitted that on the said date, this Court passed a conditional order to the effect that in case Office objections were not removed within a period of three weeks, the appeals would be automatically dismissed. The learned Senior Counsel further submits that on 17/09/2009, the Goa Civil Courts Act came to be amended and the appeals having pecuniary jurisdiction of more than Rs.20.00 lakhs were transferred to the Court of respective learned District Judges. The learned Senior Counsel further points out that as such, in terms of the said provisions, the appeals preferred by the appellants stood transferred to the Court of the learned District Judge. It is further pointed out that the matters came up before the Registrar on 13.11.2009 who dismissed the appeal, in view of the conditional order passed by this Court on 15/09/2009.

In the meanwhile, immediately thereafter, the appellants preferred an appeal before the learned District Judge, in terms of the pecuniary jurisdiction as then prevailing, along with an application for condonation of delay of 467 days which the learned District Judge, by the impugned order dated 24/06/2010, dismissed. The learned Senior Counsel, as such, submits that the appeals be allowed. The learned Senior Counsel further submits that the learned District Judge has essentially dismissed the application for condonation of delay on the ground that the appeal was dismissed by the learned Registrar for not taking steps, and the Court ceased to have jurisdiction to entertain such appeal. The learned Senior Counsel further points out that as the appeals stood transferred to the learned District Judge, the question of clearing the office objection before this Court would not arise. It is further pointed out that the order of the learned Registrar was without jurisdiction as in view of the amendment to the Civil Courts Act the appeals came to be transferred to the Court of learned District Judge. The learned Senior Counsel has, thereafter, taken me through the impugned Order to point out that the learned Judge misconstrued the provisions of law and erroneously came to the conclusion that the appellants were not entitled to condone the delay.

5. On the other hand, Mr. T. Pereira, learned Counsel appearing for the respondents has submitted to the orders of the Court. It is, however, pointed out that the appellants were not diligent in pursuing their remedy and as such, submits that the impugned orders passed by the learned Judge are in accordance with law.

6. I have considered the submissions of the learned Counsel and I have also gone through the records. The fact that the appeals were transferred in terms of the amendment to the Civil Courts Act on 17/09/2009, is not in dispute. Hence, the learned Registrar was not justified to pass the orders dated 13.11.2009, based on the conditional order passed by this Court on 15/09/2009 that if office objections were not removed within three weeks, the appeals would stand dismissed. As the appeals stood transferred to the Court of learned District Judge, there was no opportunity for the appellants to take steps to clear the Office Objections. In such circumstances, as the appeals itself were not registered, the question of refusing to entertain the appeal filed by the appellants and dismissing the application for condonation of delay, is not at all justified. In the facts and circumstances of the case, there

are no malafides attributed to the appellants and as such, considering that the appellants have acted in good faith, I find that the delay in filing the appeals deserves to be condoned. It is well settled that substantial justice should prevail over technical considerations. In the present case, as, admittedly, the appeals were not decided on merits, grave injustice would occasion to the appellants in case the delay is not condoned. In such circumstances, I find that the learned District Judge was not justified to refuse to condone the delay. The appeals, as such, deserve to be entertained and disposed of in accordance with law. The substantial question of law is answered accordingly.

7. At this stage, Mr. Sundin Usgaonkar, learned Senior Counsel appearing for the appellants submits that in terms of the interim order passed by this Court on 23/11/2011, the appellants were initially directed to deposit a sum of Rs.30,000/- and thereafter, Rs.20,000/- per annum in each of the above appeals. It is not disputed that in terms thereof, the amounts are being deposited. Considering the view that I have taken while disposing of the above appeals, and keeping all the contentions of both the parties on merits open, I find that in the peculiar facts and circumstances of the case, the

respondents should be permitted to withdraw the total amount deposited in this Court by the appellants, along with interest accrued thereon if any. Needless to say that such amounts will be subject to further orders which may be passed in the above appeals preferred by the appellants and such amount would be taken into consideration in case any amount is payable by the appellants to the respondents.

8. By consent of the learned Counsel, the interim order passed by this Court dated 23.11.2011 in Civil Applications No. 16/2011 and 79/2011 in both the appeals shall continue until final disposal of the appeal preferred by the appellants before the learned District Judge. Consequently, the appellants shall deposit the amount for the year 2017 and onwards before the learned District Judge in terms of the said order.

8. In view of the above, I pass the following :

ORDER

(I) The impugned order dated 24/06/2010 passed by the learned District Judge-I, Panaji is quashed and set aside.

(II) The learned District Judge shall register the appeals preferred by

the appellants and decide the same, after hearing the parties on merits in accordance with law as expeditiously as possible.

(III) The interim order passed by this Court dated 23.11.2011 in Civil Applications No. 16/2011 and 79/2011 shall continue to operate until disposal of the appeals.

(IV) The amount so collected by the respondents in terms herein above shall be subject to further orders as mentioned herein above.

(V) The parties are directed to appear before the learned District Judge, Panaji on 13th September, 2017

F.M. REIS, J.

ssm.