

**IN THE HIGH COURT OF BOMBAY AT GOA
MISC. CIVIL APPLICATION NO.806 OF 2016
IN
STAMP NUMBER MAIN NO.2579 OF 2016**

1. The Executive Engineer,
Work Division XVIII, (Roads) P.W.D.,
Ponda, Goa.
 2. The Deputy Collector and S.D.O.,
Ponda Sub Division, Ponda Goa.
- ...Applicants

V/s

1. Shri Madhav Atmaram Sahakari,
Resident of Kurti, P.O. Ponda,
P.O. Box No.31, Ponda Goa.
 2. Shri Vijaya Atmaram Sahakari,
Resident of Kurti, P.O. Ponda,
P.O. Box No.31, Ponda Goa.
 3. Shri Krishna Atmaram Sahakari,
Resident of Kurti, P.O. Ponda,
P.O. Box No.31, Ponda Goa.
-Respondents

Shri P. Faldessai, Additional Government Advocate for the Applicants.

Shri Ryan Menezes, Advocate for the Respondents.

CORAM : NUTAN D. SARDESSAI, J.

Reserved on : 20th APRIL, 2017

Pronounced on : 5th MAY, 2017

ORDER :

The applicants State seek the condonation of delay of 413 days by their application to that effect coming up for disposal today. It was briefly their case that the impugned judgment and award came to be passed on 19/03/2015 and a certified copy thereof was applied on 3/06/2015 and was ready on 5/06/2015. The limitation period for filing the appeal had expired on

17/06/2015 and there was a delay in filing the First appeal due to administrative procedure and movement of the file through the various departments of the Government. The legal opinion with respect to the impugned award was given on 8/06/2015 wherein the learned Government Advocate opined that it was a fit case to prefer an appeal before this Court. The legal opinion was sent to the office of the Executive Engineer on 11/06/2015 and thereafter it moved to the office of the Executive Engineer (Legal) followed by an opinion of the Executive Engineer that an appeal was required to be filed to assail the impugned award. The file had later moved to the Law Department for their legal opinion and which was received on 15/06/2015. The Law Department had given its opinion on 17/06/2015 with an observation that the department should clarify whether any appeal or cases were arising out of the same notification and ultimately the file was sent back to the Principal Chief Engineer on 19/06/2015 and it was circulated within the various Offices.

2. The file was thereafter sent to the office of the Executive Engineer on 25/06/2015 and then forwarded to the office of the Executive Engineer (Legal) on 15/07/2015 with all the annexures as requested by the Law Department. The Law Department had observed that they still had not received the

clarification with regard to the query raised by them and the file was sent to the office of the Superintendent Engineer on 23/07/2015 which was then sent to the office of the Executive Engineer on 25/07/2015_ and who resubmitted the file to the office of the Superintendent Engineer on 20/08/2015. The file next moved to the Executive Engineer on 24/08/2015 where it continued till 9/09/2015 and thereafter it moved to the Law Department on 16/09/2015 which provided its opinion on 28/09/2015. Thereafter the file moved to the Under Secretary Law when it was opined on 1/10/2015 that an appeal was required to be filed and the file was sent to the office of the Executive Engineer on 26/10/2015 when again it was opined that the process of filing the First Appeal had to be started.

3. Thereafter the file moved to the office of the learned Advocate General on 28/10/2015 which was marked for drafting on 7/11/2015 and received by the Additional Government Advocate on 9/11/2015. The rough appeal was drafted by the Additional Government Advocate on 9/12/2015 since the required documents were awaited and thereafter it was sent to the Department on 20/01/2016. The file then moved to all the departments and a final draft was prepared on 12/03/2016 which was received with the approval on 3/08/2016. The appeal was accordingly filed on

5/08/2016 resulting in a delay of 413 days which was purely unintentional and had been explained in the application under consideration. The applicants had a good case on merits and a good chance to succeed in the matter. The question involved in the present case was regarding the public exchequer and public money and therefore the delay in the matter had to be condoned and no prejudice whatsoever would be caused to the respondents. It was duly supported by the affidavit of the Executive Engineer reiterating the contents of the application on the basis of the records available in the office.

4. The respondents vehemently resisted the application on the premise that the affidavit in support of the application was not in accordance with law and without proper verification and liable to be dismissed on that premise alone. There was no explanation offered as to why the certified copy of the award pronounced on 19/03/2015 was applied for only on 3/06/2015 i.e. about 75 days later. A vague statement was made that the delay in filing the appeal was caused on account of the administrative procedure and the movement of the file through various departments of the Government but without spelling out what were the procedures required to be followed or the various departments through which it had to pass before the appeal could be filed. There was no

explanation for the various gaps and delays in processing the file from one office to the other or from one officer to the other and therefore on all these grounds the application was liable for dismissal.

5. Shri P. Faldessai, learned Additional Government Advocate came to be heard on behalf of the applicants who submitted that all the details for the delay had been explained in detail unlike the contention on behalf of the respondents who had taken technical and/or hyper-technical objections to resist the application. The applicants had accounted for the delay of 413 days and therefore considering the judgment in **State of Nagaland V/s. Lipok Ao and Ors. [2005 3 SCC 752]**, the delay had to be condoned and the appeal registered as the applicants would suffer grave prejudice and there would be a loss to the public exchequer.

6. Shri R. Menezes, learned advocate for the respondents submitted at the outset that the applicants were not at all vigilant and on that premise alone the delay could not be condoned. Valuable rights had accrued in favour of the respondents on account of the acquisition and there was no justification to condone the delay when on their own showing there were unaccounted lapses for moving the file. He relied in **Special Land Acquisition**

Officer & Anr. V/s. Jose Prazeres de Piedade Pinto & Ors. [2006 (2) Bom.C.R. 773], P.K. Ramachandran V/s. State of Kerala & Anr. [AIR 1998 SC 2276], State of Maharashtra & Ors. V/s. Vithu Kalya Govari & Ors. [2008 (5) Bom.C.R. 323], Maniben Devraj Shah V/s. Municipal Corporation of Brihan Mumbai [AIR 2012 SC 1629] and Union of India V/s. Vidarbha Venaer Industries [1993 STPL(LE) 18370 SC] apart from the chronology of the sequence of events prepared by him to show the intervening days which were lost and unaccounted in processing the file and pressing for the dismissal of the application.

7. i have heard Shri P. Faldessai, learned Additional Government Advocate for the applicants and Shri R. Menezes, learned Advocate for the respondents, considered the judgments relied upon and the facts set out in the application and the reply alongwith the chronology of events to better appreciate their case. There was no dispute that the impugned judgment and award came to be passed on 19/03/2015. However on the applicants' own showing the certified copy of the award was applied for on 3/06/2015 more than two months later with no explanation why there was delay in applying for the certified copy. Accepting for a moment that the application was within limitation and the copy was collected within limitation, nonetheless the other dates assume

relevance when the file made its movement to various offices/Officers for processing and ignoring the small period of three days initially spent for taking legal opinion, moving the file to the Law Department, receiving it from the Law Department and the opinion three days later. The applicants had not accounted for the period of 19 days when the file was sent to the office of the Executive Engineer on 25/06/2015 till it was received 19 days later on 15/07/2015. Thereafter it is equally apparent from the applicants' own showing that after the file moved to the Executive Engineer on objections being raised by the Law Department, it did not account for the 26 days delay in moving to the office of the Superintendent Engineer and its return to the office of the Executive Engineer.

8. The chronology of events also shows that file had moved to the Secretariat where it lay for about 22 days and there was no explanation again for this delay. The Law Department too had given its opinion 12 days later but there was no explanation of what transpired in these 12 days. Subsequently, the file moved again to the office of the Executive Engineer 25 days later with no explanation for what transpired in these 25 days period and why again there was need for the Executive Engineer to opine that an appeal was required to be filed. The file had thereafter proceeded

to the office of the learned Advocate General who had marked it to the Additional Government Advocate with whom it lay for about 10 more days and a draft of the appeal was prepared in the next 30 days. The file had moved to the department back again with changes in the appeal memo after a gap of 35 days and then it moved to all the departments with the accompanying additional documents for 28 more days without any explanation as to what were the documents and what was the necessity for the movement of the file. The final draft was sent to the Government for approval on 12/03/2016 i.e. 23 days later and its approval granted only after 175 days i.e. in August, 2016. There was no explanation why the approval of the appeal took about 175 days since the opinion of the Government Advocate before the Reference Court, Law Department and Under Secretary Law were already a part of the record of the process for taking a decision to file the appeal and to prepare the appeal.

9. In **State of Nagaland** (supra), the Hon'ble Apex Court held while dealing with an application for grant of leave to prefer an appeal that Government and private parties cannot be put on the same footing in the matter of the condonation of delay. The factors which are peculiar to and characteristic of the functioning of the governmental conditions would be cognizant to and required

adoption of a pragmatic approach and certain amount of latitude was not impermissible. The Apex Court condoned the delay of 57 days in filing the appeal against the acquittal of the accused and granted leave to appeal. This judgment is squarely distinguishable in the facts of the case. In **Special Land Acquisition Officer and Anr.** (supra), this Court while dealing with the application for the condonation of delay of 281 days in filing the First Appeal against the award passed by the Reference Court, that the reasons stated by the applicants that the delay was caused due to the movement of the file from one table to the other and when the application for the condonation of delay was itself filed 51 days after filing the appeal held that mere statements recording the movement of the file from one office to the another, from one table to the other cannot be considered as a satisfactory explanation for the delay in filing the appeal. The total failure on the part of the applicants in explaining the cause of the delay of 281 days in filing the appeal as well as 51 days delay in filing the application for the condonation of delay was not justified and dismissed the application with costs to be recovered from the Officer responsible for the delay in filing the appeal.

10. In **P.K. Ramachandran** (supra), the Hon'ble Apex Court held that the law of limitation had to be applied with all its

rigour prescribed by the statute and the Courts have no power to extend the period of limitation on equitable grounds. The respondents State had filed the Misc. Appeal against the judgment and decree of the learned Sub-Court at Kollam which was barred by 565 days and sought for the condonation of delay which was allowed taking into consideration the averments contained in the affidavit filed in support of the petition to condone the delay. The Hon'ble Apex Court found on a perusal of the impugned order that the Court had not recorded any satisfaction that the explanation for the delay was either reasonable or satisfactory, which is an essential prerequisite for the condonation of delay. Moreover the ground urged for condoning the delay was that "at that time the Advocate General's office was fed up with so many arbitration matters equally important to this case were pending for consideration as per the directions of the Advocate General" could hardly be said to be a reasonable, satisfactory or even a proper explanation for seeking the condonation of delay. Besides, the Hon'ble Apex Court was equally seized of the fact that the law of limitation may harshly affect the particular party but it had to be applied with all its rigour when the statute so prescribed and the Courts have no power to extend the period of limitation on equitable grounds.

11. In **State of Maharashtra & Ors.** (supra), this Court dealt with the application for the condonation of delay of more than 2 years filed by the State setting out the ground that there were official hassles and steps which resulted in the delay. The Division Bench of this Court considered the judgment in **P.K. Ramachandran** (supra), amongst others including **Collector, Land Acquisition, Anantnag & Anr. V/s. Mst. Katiji & Ors. [AIR 1987 SC 1353]**, and held that the State had failed to show sufficient cause for the condonation of delay of more than 2 years and besides observed that it was expected of the competent authority to fix responsibility of the erring officer/officials. In **Maniben Devraj Shah** (supra), the Hon'ble Apex Court held that the Court had to adopt a liberal approach while dealing with the application for the condonation of delay and that the expression "sufficient cause" was elastic enough to enable the Courts to apply the law in a meaningful manner which serves the ends of justice. At the same time it held that though a liberal and justice oriented approach was required to be adopted in the exercise of power under Section 5 of the Limitation Act, the Courts could neither become oblivious of the fact that the successful litigant had acquired certain rights on the basis of the judgment under challenge and a lot of time was consumed at various stages of litigation apart from the cost. What colour the expression

“sufficient cause” would get in the factual matrix would largely depend on the bonafide nature of the explanation. If the Court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bonafides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay. In cases involving the State and its agencies/instrumentalities, the Court can take note of the fact that sufficient time is taken in the decision making process but no premium can be given for total lethargy or utter negligence on the part of the officers of the State and/or its agencies/instrumentalities and the applications filed by them for the condonation of delay cannot be allowed as a matter of course by accepting the plea that dismissal of the matter on the ground of bar of limitation would cause injury to the public interest.

12. In **Union of India** (supra), the Apex Court found that there was an inordinate delay in filing the special leave petition. The only submission made by the learned Counsel for the petitioners raised on the averments in the application for the condonation of delay was that the relevant file was misplaced for quite some time in the office of Central Agency and these special

leave petitions were filed after some delay even though that file could not be traced. There was nothing in the application for the condonation of delay to indicate the action taken to find out how the file got lost or to fix the responsibility of someone who should be accountable for the same and accordingly dismissed the petition as time barred.

13. Although a plea has been taken on behalf of the applicants State that the objections are hyper-technical, a discussion of the chronological sequence of events coupled with the judgments, would show that there has been no proper explanation for the delay in filing the appeal even if a pragmatic approach is adopted while dealing with the application involving an instrumentality of the State. The crowning glory so to say is the non explanation of the delay of 175 days after the file had moved for approval. There are several such instances which have been delineated before which do not justify the condonation of delay. In the circumstances therefore and considering the law enunciated by this Court as well as by the Hon'ble Apex Court, i do not find any merit in the application which is hereby dismissed.

NUTAN D. SARDESSAI, J.

NH