

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 1074 OF 2016

M/S. BELLA VISTA HOTELS PVT. LTD.,
THR. ITS MANAGING DIRECTOR, MS.
ANNABELLE PEREIRA.,

... Petitioner

Versus

M/S. EDC LTD., THR. ITS MANAGING
DIRECTOR AND ANR.,

... Respondents

Mr. Thalmann Pradeep Pereira, Advocate for the Petitioner.

Mr. S.N. Joshi, Advocate for Respondent No.1.

Power of Attorney of Respondent no.2, is present on behalf of
Respondent No.2.

Coram:- C. V. BHADANG, J.

Date:- 9th January, 2017

ORAL ORDER:

In this case, a notice indicating that the petition could be heard finally at the stage of admission, was issued on 29.11.2016. In pursuance, thereof, the petition is taken up for final disposal, by consent of the parties.

2. The petitioner had filed Regular Civil Suit No.147/2003, challenging the attachment and sale of the subject properties by respondent no.1 in favour of respondent no.2. The suit was dismissed in default on 26.08.2011. The petitioner filed an application for restoration, being Civil Miscellaneous Application No.25/2012, which was delayed by 352 days. The application for restoration was accompanied by an application

for condonation of delay for 352 days. The learned Trial Court dismissed the application on 15.03.2013. The petitioner obtained the certified copy of the said order on 18.03.2013. However, when an appeal (Stamp No.932/2013) was presented, against the said order dated 15.03.2013, an office objection was raised that the copy of the original order dated 26.08.2011 has to be filed alongwith the appeal. The petitioner accordingly, obtained the copy of the said order and by that time, the appeal got delayed by 13 days as it was presented on 30.04.2013. Hence, the petitioner filed an application, being Civil Miscellaneous Application No.73/2013, for condonation of delay in filing the appeal. The learned District Judge has dismissed the said application by order dated 25.11.2014, which is subject matter of challenge in this petition.

3. It may be mentioned that before filing this petition, the petitioner had filed Appeal From Order No.1/2015, challenging the said order, which was withdrawn on 20.10.2016. Subsequent to which, the present petition is filed.

4. It is submitted by the learned Counsel for the petitioner that the only question before the learned District Judge was about condonation of delay of 13 days in filing the appeal. It is submitted that the appeal was not heard on merits and as such, the learned District Judge could not have gone on the aspect of

delay, in filing the application for restoration of the suit.

5. On the contrary, it is submitted on behalf of respondent no.1 that there are gross laches and negligence on the part of the petitioner, both, in prosecuting the suit and in filing the application for restoration and the application has rightly been rejected.

6. On hearing the learned Counsel for the parties and on perusal of the record, it appears that insofar as Civil Miscellaneous Application No.73/2013 is concerned, the only issue was about condonation of delay of 13 days in filing the appeal. It is not disputed on behalf of the respondents that the appeal was not heard and could not have been heard on merits, unless and until the delay was condoned. The ground, insofar as delay in filing the appeal is that, there was an office objection raised that the copy of the order dated 26.08.2011, has to be annexed to the appeal. Considering the said circumstances and the extent of delay of 13 days, I find that the same deserves to be condoned.

7. In the result, the petition is allowed. The impugned order dated 25.11.2014, is hereby set aside. The delay in filing the appeal, is hereby condoned. The learned District Judge shall proceed to register the appeal (Stamp No.932/2013) and hear the

appeal on its own merits. It is made clear that this Court has not expressed any opinion on the merits of the appeal and the prayer for condonation of delay, in filing the application for restoration of the suit.

In the circumstances, there shall be no order as to costs.

C. V. BHADANG, J.

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