

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.355 OF 2017

- 1 Shri Shantilal Babu Patel,
Aged about 55 years,
Son of late Shri Babu Patel,
Married, Agriculturist,
Resident of H.No.116 old,
699 New, Bordem, Bicholim-
Goa. ... Petitioner No.1.
- 2 Mrs. Sathi Shantilal Patel,
Aged about 44 years,
Wife of Shri Shantilal Babu Patel,
Housewife,
Resident of H.No.116 old,
699 new, Bordem, Bicholim- Goa. ... Petitioner No.2.

Versus

- 1 Shri Ramakant Subrao Shetye,
Aged 44 years,
son of late Shri Subrao Shetye,
Real estate, Resident of Shriram
Smurit,
Bordem, Bhicholim, Goa.
- 2 Caitan Floris D'Souza (SD)
By legal heirs,
a) Smt. Evelyn Kateli,
R/o. Faridoon Court,
3rd floor, 73-A.
Shahid Bhagat Singh Road,
Colaba 400 005.
Presently residing in USA.
- 3 Mr. Eulogio F. D'Souza,
son of late Antonio A. D'Souza
And his wife.
- 4 Mrs.Assumption Doreen D'Souza,

Both are the resident of

Ektanagar, Housing Board
Mapusa, Bardem – Goa.

- 5 Mr. Rogerio Silvano D'Souza (SD)
Represented by his Wife
- 6 Mrs. Romana Idalina Flomena
D'Souza,
Widow of Rogerio Silvano
D'Souza,
Resident of Olic House, Carasco
Vaddo, Mapusa, Bardez- Goa.
- 7 Ms. Sulochana Patel,
Aged 75 years,
Wife of late Shri Babu Patel,
Resident of H.No.116 old,
699 new, Bordem, Bicholim- Goa. ...Respondents.

Shri Iftikar Agha, Advocate for the petitioners.

Shri A.D. Bhobe, Advocate for the respondents.

CORAM: NUTAN D. SARDESSAI, J.

RESERVED ON : 16th July, 2018.

**PRONOUNCED 19th July, 2018.
ON :**

JUDGMENT :-

1. Heard forthwith with the consent of the learned Advocate
for the parties.
2. Rule.

3. Shri A.D. Bhobe, learned Advocate waives service of notice on behalf of the respondents.

4. The petitioners have taken exception to the order dated 14/02/2017 passed by the Administrative Tribunal pursuant to which the learned Presiding Judge dismissed the application for the condonation of delay and consequentially disposed off the application for stay and the revision challenging the order of the Deputy Collector dated 01/02/2016.

5. Heard Shri Iftikar Agha, learned Advocate for the petitioners who submitted that the petitioners were neither given oral hearing nor were they permitted to file their written arguments and yet the learned Presiding Officer of the Tribunal passed the impugned order which was against the principles of natural justice. Besides, the learned Presiding Judge had passed the impugned order merely on a perusal of the contents of the application and reply and without giving any hearing to the petitioners. He adverted to the impugned order to show that there was no material apparent to indicate that the oral arguments were heard. The learned Tribunal, therefore, erred in dismissing the application and hence, the order was liable to be interfered with, quashed and set aside. He placed reliance

in **Sonerao s/o. Sadashivrao Patil and Anr v/s. Godawaribai w/o. Laxmanshing Gahirewar and Ors.** [1999(2) ALL MR 507] and **Rafiq and another v/s. Munshilal and another** [AIR 1981 SC 1400] in support of his case.

6. Shri A.D. Bhole, learned Advocate for the respondents submitted that the judgment was delivered by the Deputy Collector on 01/02/2016, the copy was ready for delivery on 23/02/2016 which was collected by the petitioners on 24/02/2016. They had to file the revision challenging the said order within 60 days but it was not done and the petitioners for the first time were asked by their Advocate in June, 2016, much after the period for preferring the Revision was over and the Revision Application was filed only on 29/08/2016. The petitioners had relied upon the Medical Certificate of the first petitioner but even then there was no explanation for the delay from July till August. No cause was shown by the petitioners and hence the petition had to be dismissed.

7. Shri A.D. Bhole, learned Advocate for the respondents placed reliance in **Pundlik Jalam Patil (D) by Lrs. V/s. Exe. Eng. Jalgaon Medium Project and another** [AIR 2008 SC

1025], **Victor Albuquerque v/s. Sawaswat Co-Operative Bank Ltd. and others** [1998 (3) Bom.C.R. 93] to meet the contention of the violation of the principles of the natural justice and submitted that looking to the length of time taken on behalf of the petitioners, the Tribunal had rightly considered the application and the reply and then passed the order under challenge. There was no error in the findings of the learned Tribunal. He placed further reliance in **Esha Battcharjee v/s. Managing Committee of Raghunathpur Nagar Academy and others** [(2013) 12 SCC 649] and on an unreported judgment in **Tukaram Pandurang Sawant and another v/s. Parvati Venkatesh Sawant and others** [Writ Petition No.656 of 2017] delivered by a learned Judge of this Court (C.V. Bhadang,J) for its persuasive value and submitted that the petitioners were not at all truthful. The petitioner No.2 in particular had not accounted for the delay and therefore no fault could be found with the order under challenge and the petition had to be dismissed.

8. i would consider their submissions, the judgments relied upon and proceed to decide the petition accordingly.

9. Undisputably, the judgment and order was passed by the

Deputy Collector on 01/02/2016 and the copy was collected on behalf of the petitioners only on 24/02/2016 after it was ready on 23/02/2016. However, the revision application alongwith the application for the condonation of delay came to be filed only in August 2016 much beyond the period of limitation. The case of the petitioner No.1 in particular was that he was not well for quite sometime and it was only when his lawyer questioned him somewhere in June 2016 that he realised that he had to prefer a revision and accordingly filed the revision petition in August 2016 alongwith the application for condonation of delay. The petitioner No.1 supported his case with the Medical Certificate. A cursory perusal thereof indicates that the petitioner No.1 was suffering from Acute Asthmatic Bronchitis coupled with fever from 14/06/2016 and was advised rest for about 10 to 15 days and to undergo some investigative tests. Even if this period is taken into account, the petitioner No.1 had not accounted for the period of July and August till the revision came to be filed alongwith the condonation of delay application somewhere on 29/08/2016. This is besides the fact that the petitioner No.2 had no explanation to account for the delay in preferring the revision.

10. The learned Tribunal had noted the conduct of the petitioners and had clearly recorded at paragraph 3 of the impugned order that the roznama revealed that the applicants had delayed the disposal of the application on one ground or the other and even on the scheduled date, the applicant No.1 had appeared in person and sought time to argue the application and that too on unacceptable grounds. Therefore, the learned Presiding Officer of the Tribunal was constrained to peruse the application and the reply and proceed to pass the order under challenge. It cannot, therefore, be heard on behalf of Shri Iftikar Agha, learned Advocate for the petitioners that the learned Tribunal had gone contrary to the principles of natural justice and decided the application. The learned Tribunal had clearly recorded that umpteen adjournments had been sought on behalf of the petitioners and even on that date had found the move for adjournment unwarranted and hence proceeded to consider the application and the reply and decided the application. Therefore, it does not lie in the mouth of the petitioners to contend that they were not given any opportunity of hearing or to file their written submissions when the learned Judge proceeded to dismiss the application.

11. The applicants had no explanation to account for the delay from the month of July and till 29/08/2016 when the Revision Petition came to be filed alongwith the application for the condonation of delay. This is besides the point that no cause was also shown for this inordinate delay in filing the Revision.

12. In **Sonerao Patil** (supra), a learned Single Judge of this Court reiterated the guidelines, which should be borne in mind while interpreting the concept of "sufficient cause". There could be no dispute on that count but whether they apply in the factual matrix is itself a moot question and hence reference to those principles laid down by the Hon'ble Apex Court in **Collector, Land Acquisition, Anantnag vs. Mst. Katiji & others** [AIR 1987 SC 1353] is of no avail.

13. In **Rafiq** (supra), the Hon'ble Apex Court held that a party should not suffer for the misdemeanor or inaction of his Counsel. This judgment too does not advance the petitioners case inasmuch as it was for the petitioners to pursue their remedy and not to shift the burden on the Advocate and canvas that it is only on the lawyer's questioning the petitioners in June 2016 did he realise that the order had to be challenged. Even

assuming that such a plea is tenable for arguments sake, there was no explanation why the petitioners had not filed the revision soon thereafter and allowed almost 2 months time to pass by excluding the period of his medical illness.

14. In **Pundalik Patil** (supra), the Hon'ble Apex Court held at paragraph 23 as below:

"23. Statutes of limitation are sometimes described as statutes of peace. An unlimited and perpetual threat of limitation creates insecurity and uncertainty; some kind of limitation is essential for public order. This court in *Rajender Singh and others vs. Santa Singh and others* [(1973) 2 SCC 705] has observed : "the object of law of Limitation is to prevent disturbance and deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence or laches". In *Motichand vs. Munshi* [(1969) 2 SCR 824], this court observed that this principle is based on the maxim "*interest reipublicae ut sit finis litum*", that is, the interest of the State requires that there should be end to litigation but at the

same time law of Limitation are a means to ensuring private justice suppressing fraud and perjury, quickening diligence and preventing oppression. It needs no restatement at our hands that the object for fixing time limit for litigation is based on public policy fixing a life span for legal remedy for the purpose of general welfare. They are meant to see that the parties do not resort to dilatory tactics but avail their legal remedies promptly. Salmond in his jurisprudence states that the laws come to the assistance of the vigilant and not of the sleepy."

15. In **Victor** (supra), the learned Single Judge of this Court relying on the Hon'ble Apex Court's judgment in **Ramlal and others v/s. Rewa Coalfields Ltd.** [AIR 1962 SC 361] held that what the party has to show is as to why he did not file the appeal even on the last day of the limitation period prescribed. This may inevitably require the party to show sufficient cause for not filing the appeal till the last day of the period of limitation as well as further explanation for the delay caused thereafter. When a party allows the period of limitation to expire without filing the appeal and desires to claim sufficient cause for

not filing the appeal within the prescribed period, the sufficient cause to be shown by the party would not be restricted only to the period beyond the period of limitation but the party has to justify as to why the period of limitation was allowed to be expired without taking proper action for filing of the appeal. Merely justifying the delay beyond the period of limitation prescribed for filing the appeal would not automatically entitle the party to get the delay condoned.

16. In **Esha Battacharjee** (supra), the Hon'ble Apex Court culled out the following broad principles :-

“21.1 i) There should be a liberal, pragmatic, justice-oriented, non- pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

21.2 ii) The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact- situation.

21.3 iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4 iv) No presumption can be attached to deliberate

causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

21.5 v) Lack of bonafides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.6 vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

21.7 vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.8 viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

21.9 ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

21.10 x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side

unnecessarily to face such a litigation.

21.11 xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

21.12 xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

21.13 xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

22. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are: -

22.1 a) An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

22.2 b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

22.3 c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and

collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

22.4 d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters.

17. Tukaram Sawant (supra), challenged in the petition under Article 227 of the Constitution of India, the order passed by the Adhoc District Judge, Mapusa condoning the delay of 75 days in filing the appeal. The learned Single Judge (C.V. Bhadang,J.) considered the circumstances apart from the submissions and the guidelines laid down in **Esha Bhattacharjee** (supra) and found that the principles laid down by the Hon'ble Apex Court in **Esha Bhattacharjee** (supra), had not at all been considered by the Trial Court, set aside the impugned order and dismissed the application for the condonation of delay. This judgment, however, has only a persuasive value but considering the other judgments on the point particularly in **Esha Bhattacharjee** (supra), and in the factual matrix, no merit is found in the case set up by the petitioners for the condonation of delay. The jurisdiction of this Court is, therefore, not required to be exercised under Article

227 of the Constitution of India and in view thereof, i pass the following

ORDER

The petition is dismissed with no order as to costs.

NUTAN D. SARDESSAI J.

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