

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 870 OF 2018**

State of Goa, Thr. the Chief Secretary & 2 Others	...	Petitioners
Versus		
Shankar Tukaram Methar, Rep. By Vinayak S. Methar & Anr.	...	Respondents

Ms. Amira A. Razaq, Government Advocate for the Petitioners.

Mr. Clayton Fonseca, Advocate for the Respondent No. 1.

CORAM : C.V. BHADANG, J.

Date : 14th December, 2018

ORAL ORDER:

By this petition, the petitioners, who are the original defendants, are challenging the order dated 31.01.2018, passed by the learned Adhoc District Judge at Mapusa in Civil Suit No. 45/2015. By the impugned order, the application (Exhibit-15) filed by the petitioners, for condonation of delay in filing written statement, has been dismissed.

2. The brief facts are that the respondent no. 1 has filed the aforesaid suit for declaration, injunction, damages, mandatory injunction and for compensation of Rs.50 lakhs, on the allegation that the petitioners, without the permission of the respondent no. 1 (who is one of the co-owners of land survey no.

109/11 of village Arambol, Pernem, Goa) and without acquisition of the land, has laid a road in the said land.

3. The petitioners were served with the suit summons on 09.02.2016, however, did not file written statement within a period of ninety days from the service of the summons. The written statement was eventually filed on 12.06.2017, resulting into a delay of 399 days, excluding the statutory period of ninety days for filing the written statement. The petitioners filed an application for condonation of delay, on grounds as set out in the application (Exhibit-15).

4. The application was opposed on behalf of the respondent no. 1, on the ground that no case for condonation of delay is made out.

5. The learned Trial Court by the impugned order has dismissed the application. Hence, this petition.

6. I have heard Ms. Razaq, the learned Government Advocate for the petitioners and Shri Fonseca, the learned Counsel for the first respondent. With the assistance of the learned Counsel for the parties, I have gone through the record.

7. Ms. Razaq, the learned Government Advocate for the petitioners has submitted that Advocate Sanjiv Sardessai, who was appointed to defend the suit on behalf of the petitioners had resigned and the matter was then allotted to Ms. Ranjana Salgaonkar. It is submitted that the then Assistant Engineer and Nodal Officer could not prepare the para wise remarks as he was entrusted with the time bound work of Mopa Airport project road. Subsequently, the Nodal Officer was promoted as Executive Engineer and another Assistant Engineer, Mr. Mahajan took over on 28.12.2016. He, however, was busy with the election duty of the Goa Legislative Assembly, which elections were announced in January, 2017. It was in these circumstances that the delay has occasioned. It is submitted that the para wise comments were given to the Advocate and the written statement was drafted and sent to the Government for approval, which was obtained only on 02.06.2017. The written statement was filed immediately thereafter on 12.06.2017. It is submitted that the period as prescribed under Order VIII, Rule 1 of CPC is held to be directory and not mandatory and the Court would always lean in favour of deciding the matter on merits, than on technicalities. It is submitted that there were exceptional circumstances beyond the control of the petitioners and therefore, the delay ought to have been condoned.

8. Mr. Fonseca, the learned Counsel for the respondent no. 1 has supported the impugned order. It is submitted that there is inordinate delay in filing the written statement. It is submitted that the application is filed in a casual manner, which does not make out any exceptional circumstances, much less sufficient cause, for condoning the delay.

9. I have given my anxious consideration to the rival circumstances and the submissions made. It is true that normally, the Court would lean in favour of deciding a matter on merits, than on technicalities. However, this is a case where I am unable to persuade myself to hold that the petitioners have made out sufficient cause for not filing the written statement within time or to hold that the impugned order suffers from any infirmity, so as to require interference.

10. Order VIII, Rule 1 of CPC provides that the defendant shall file the written statement within thirty days from the date of service of summons on him. The proviso appended to the said rule says that where the defendant fails to file the written statement, within the said period of thirty days, he shall be allowed to file the same on such other date, as may be specified by the Court, for reasons to be recorded in writing, but, which

shall not be later than ninety days from the date of service of summons. It is true that in the case of **Kailash Vs. Nankhu, (2005) 4 SCC 480**, the Hon'ble Supreme Court has held that the provision is directory and not mandatory. However, in a subsequent decision in the case of **R.N. Jadi & Brothers and Others Vs. Subhashchandra, (2007) 6 SCC 420**, it is held thus in para 14 of the judgment:-

"It is true that procedure is the handmaid of justice. The Court must always be anxious to do justice and to prevent victories by way of technical knockouts. But how far that concept can be stretched in the context of the amendments brought to the Code and in the light of the mischief that was sought to be averted is a question that has to be seriously considered. I am conscious that I was a party to the decision in Kailash Vs. Nankhu, (2005) 4 SCC 480, which held that the provision was directory and not mandatory. But there could be situations where even a procedural provision could be construed as mandatory, no doubt retaining a power in the Court, in an appropriate case, to exercise a jurisdiction to take out the rigor of that provision or to mitigate genuine hardship. It was in that context that in Kailash (supra), it was stated that the extension of time beyond 90 days was not automatic and that the Court, for reasons to be recorded, had to be satisfied that there was sufficient justification for departing from the time limit fixed by the Code and the power inhering in the Court in terms of Section 148 of the

Code. *Kailash (supra)* is no authority for receiving written statements, after the expiry of the period permitted by law, in a routine manner."

(Emphasis supplied)

11. Even in the case of **Kailash** (supra), the Hon'ble Supreme Court has held that the extension beyond the period of ninety days, should not be granted, just as a matter of routine and merely for the asking. The extension can only be by way of an exception and for the reasons assigned by the defendant and recorded in writing by the Court to its satisfaction. It has been held that the departure from the time schedule prescribed by Order VIII, Rule 1 of the Code of Civil Procedure can only be on account of exceptional circumstances, where the delay has occasioned for reasons beyond the control of the defendant.

12. The principles apart, the question whether, in a given case, the defendants can be permitted to file the written statement, beyond the period as prescribed, would depend upon facts and circumstances of each case. In order to appreciate the rival contentions in this case, the relevant dates may be noticed as under:

09.02.2016 : Summons were served on the defendants/petitioners and they requested the Government to give them the services of a Government Counsel.

- 08.03.2016 : Mr. Sanjiv Sardessai was appointed as an Advocate on behalf of the petitioners.
- 07.06.2016 : Mr. Sanjiv Sardessai resigned and withdrew from the case citing personal reasons, which was reported to the Government.
- 19.07.2016 : Advocate Mrs. Ranjana Salgaonkar was appointed to defend the petitioners in the suit. Mr. Gawade, then Assistant Engineer and Nodal Officer contacted Advocate Salgaonkar and was asked to give para wise comments, which he could not do till December, 2016.
- 13.12.2016 : Mr. Gawade was promoted as Executive Engineer and was relieved.
- 28.12.2016 : Mr. Mahajan took over as Assistant Engineer. However, he was busy with General Elections of the Goa Legislative Assembly, which were announced in the month of January, 2017, which delayed the preparation of the para wise comments.
- The para wise remarks (of which the date is not mentioned in the application) were ultimately handed over to the Advocate for drafting the written statement and the written statement was prepared and sent for vetting.
- 02.06.2017 : The written statement was received after vetting, after which it was verified and affirmed and eventually filed in the suit on 12.06.2017.

13. Thus there is a delay of 399 days, excluding the statutory period of ninety days. The chronology as set out above is sufficient to hold that there was lack of diligence at every stage of the matter, for reasons which are omnibus in nature. In any event, there are no exceptional circumstances made out for

condonation of delay.

14. I have carefully gone through the impugned order and in my considered view, the learned Trial Court is right in holding that the delay is not at all explained and the petitioners are not entitled for the delay being condoned. I see no infirmity in the impugned order, so as to require interference in the exercise of the supervisory jurisdiction under Article 227 of the Constitution of India. The petition is without any merit and is accordingly dismissed, with no order as to costs.

C.V. BHADANG, J.

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