

IN THE HIGH COURT OF BOMBAY AT GOA**SECOND APPEAL NO. 38 OF 2018**

Hendry Daniel	...	Appellant
Versus		
Bhiku Ganba Desai	...	Respondent

Shri Purushottam R. Karpe, Advocate for the Appellant.

Coram : C.V. BHADANG, J.

Date : 18th JUNE 2018

ORAL ORDER:

Heard Shri Karpe, the learned Counsel for the appellant.

2. The Second Appeal challenges the order dated 14.03.2018, passed by the learned District Judge in Civil Miscellaneous Application No. 103/2017, thereby refusing to condone the delay in filing an appeal. As the dismissal of application for condonation of delay amounts to confirmation of the judgment and decree of the Trial Court, the appellant has come up in Second Appeal.

3. I have heard Shri Karpe, the learned Counsel for the appellant. None appears for the respondent, though served.

4. On hearing the learned Counsel for the appellant and on perusal of the record, I do not find that the appeal raises any substantial question of law.

5. The respondent no. 1 had filed a suit for recovery of Rs.1,20,000/-, from the appellant, along with interest. The suit came to be decreed on 05.05.2017. The appellant did not file the appeal within time, which was delayed by about 57 days. Normally, looking to the extent of delay, the Court would have condoned the same. However, the learned District Judge in the impugned order has found that the appellant has come up with a false ground, which does not entitle the appellant with the relief of condonation of delay.

6. The learned District Judge has noticed in paragraph 8 of the impugned order that the appellant was present when the impugned judgment and decree was passed by the Trial Court and therefore, the averment in the application that the appellant was not present stands falsified. The learned District Judge further noticed that the certified copy was applied for the purposes of filing an appeal, which would show that the appellant was already advised to file appeal, which falsifies the averment made in the application that the appellant sought

advice from Advocate at Canacona in the third week of July, when the appellant was advised to file appeal.

7. The record further discloses that the respondent had filed a complaint under the Negotiable Instruments Act, against the appellant for dishonour of cheque, representing the amount, which was subject matter of dispute. The criminal case was compounded on the appellant agreeing to pay the entire cheque amount in three installments, which was not complied with. Even before the Trial Court, an application was made stating that the appellant has applied for withdrawal of GPF, but, during the course of the arguments, the learned Counsel for the appellant submitted that till today, no such application for withdrawal of GPF is made. It is seen that the appellant is repeatedly coming before the Court with grounds, which are incorrect and/or false or concocted. The Hon'ble Court in the case of **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and Others, (2013) 12 SCC 649** has held that a party may not be entitled to condonation of delay, if, the party is coming with grounds which are either fanciful or concocted. The impugned order refusing to exercise discretion in favour of the appellant, does not suffer from any infirmity.

In such circumstances, the Second Appeal does not raise any substantial question of law. Accordingly, the Second Appeal is dismissed.

C.V. BHADANG, J.

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