

IN THE HIGH COURT OF BOMBAY AT GOA

MISC.CIVIL APPLICATION NO. 422 OF 2017

IN

STAMP NUMBER MAIN NO. 2288 OF 2016

QUERIM RESORTS PVT. LTD.,

... Applicant

Versus

ASSISTANT DIRECTOR, DIRECTORATE OF
ENFORCEMENT, GOVT. OF INDIA AND
ANR.

... Respondent

Shri Mahesh Amonkar, Advocate for the Applicant.
Shri Nikhil A. Vaze, Advocate for the Respondent nos.1 and 2.

Coram:- NUTAN D. SARDESSAI, J.

Date:- 4th October 2018

P.C.

Heard Shri Mahesh Amonkar, learned Counsel appearing for the applicant and Shri Nikhil Vaze, learned Counsel appearing for the respondents.

2. Learned Counsel appearing for the respondents has placed reliance on Esha Bhattacharjee vs Managing Committee of Raghunathpur Nafar Academy & Ors.[(2013) 12 SCC 649].

3. It has been the contention of Shri Amonkar, learned Counsel for the applicants that a copy of the impugned order dated 28.11.2013 passed by the Appellate Tribunal for FEMA was

received only on 06.12.2013 and thereafter a Writ Petition came to be filed before this Court on 06.01.2014 immediately on receipt of the copy of the impugned order. The Writ Petition was admitted by the Division Bench which also secured the applicant with the interim relief against the order passed by the Appellate Tribunal for Foreign Exchange and the petition was pending for final arguments. The matter came up for final hearing and disposal on 06.04.2016 and during the course of the hearing the Court spelt out to the applicant that it had the remedy to challenge the impugned order dated 28.11.2013 by way of an appeal in terms of Section 35 of the FEM Act, 1999. Accordingly, he had withdrawn the Writ Petition to file the appeal. The Registry was directed to return the certified copy of the impugned order in terms of the rules which was received by him in June 2016 and thereafter an appeal was filed under the FEM Act within 90 days from the return of the certified copy. The time spent by the applicant in bonafide pursuing the writ before the Division Bench of this Court and thereafter had to be excluded and therefore the delay in filing the appeal amounting to 899 days had to be excluded and the appeal had to be registered.

4. Shri Nikhil Vaze, learned Counsel appearing for the respondents opposed the application on the premise that the delay was unexplained and besides the application was drafted in

a casual and lethargic manner and there was no genuine reason made out for the condonation of delay. Hence, no case was made out in bonafide pursuing his remedy by condoning the delay as prayed in the application.

5. i have considered the grounds urged in the application from which it is apparent that the applicants were bonafide in pursuing their remedy though in a Writ Petition before the Division Bench which was disposed off finally on 06.04.2016. Thereafter, the certified copy was received by them from the Registry of this Court only in June 2016 and only then was an appeal filed under the Foreign Exchange Amendment Act, 1999 within 90 days from the return of the certified copy. However, the period for preferring an appeal is not 90 days but 60 days as provided under Section 35 of the Act. i have considered the judgment in Esha Bhattacharjee (supra), which is clearly distinguishable considering that the applicants have spent time bonafide pursuing the remedy of Writ Petition before the Division Bench of this Court and which is required to be condoned. It cannot be heard on behalf of the respondents that the applicants were either lethargic or casual in their approach in seeking the condonation of delay.

6. In view thereof, the application is allowed. The delay is condoned and the Registry is directed to register the appeal.

7. Application accordingly stands disposed off.

NUTAN D. SARDESSAI, J.

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