

IN THE HIGH COURT OF BOMBAY AT GOA.

SECOND APPEAL NO. 5 OF 2019.

Glenn A. Lobo
Versus

... Appellant.

Teresa Lobo @Terezine Pinto e
Lobo and 3 ors.

... Respondents.

Appellant in person.

Mr. J. A. Lobo, Advocate for respondent no.2.

Coram:- PRITHVIRAJ K. CHAVAN, J.
Reserved on:20th August, 2019.
Pronounced on:-29th August, 2019.

ORDER

The appellant who is an advocate by profession and the plaintiff in Regular Civil Suit No.188/2014 has approached this Court by way of Second Appeal. His suit seeking a declaratory relief as well as easementary right came to be dismissed by the Civil Judge, Junior Division, Mapusa on 7.11.2016.

2. Since there was a delay in preferring the appeal, the appellant had moved an application for condonation of delay which came to be

dismissed by the Additional District Judge on 24.7.2017. Aggrieved, the appellant has challenged the impugned order dated 24.7.2017.

3. Heard Mr. Glen Lobo who appeared in person and Mr. J. A. Lobo, learned Counsel appearing for the respondents.

4. It is alleged by Mr. Lobo that the learned trial Judge was biased and tampered with the evidence for which he had filed a complaint against him with the Chief Justice of High Court of Bombay. Mr. Lobo, contends that he had applied for copy of the judgment and decree dated 7.11.2016, and, therefore limitation will begin from 7.11.2016. The copy of the judgment and decree was given on 22.11.2016 and, therefore, he filed the appeal before the District Judge on 20.12.2016, as such there was no delay. It is contended that when he had asked his friend one Mr. Nelson D'souza to collect the copy of the judgment and decree, he was informed by the staff of the Court to come on 16.11.2016 as the copy was not ready. The appellant came to Goa from Mumbai and went to the Court at Mapusa on 16.11.2016. However, Courts staff informed him to come on 21.11.2016. When he approached

on that day, the staff informed him to come after lunch recess. When he visited the Court after lunch recess, the staff took his signature on the copy of the judgment and decree and asked him to come on 22.11.2016 for collecting the same as the office hours were over. The appellant left for Mumbai asking his friend to collect the same from the office.

5. While preferring an appeal, the appellant moved an application under Section 5 of the Limitation Act. He contends that in fact there was no delay, however, the appellant moved an application for condonation of four days delay. The learned Additional District Judge by the impugned order dated 24.7.2017 rejected the application.

6. On the other hand, Mr. Lobo, learned Counsel appearing for the respondent no.2 submitted that no sufficient cause has been shown by the appellant to condone the delay of four days. Rather, the appellant blamed the Judge and staff of the Court which is apparent from the tenor of the language used in the application.

7. Learned Counsel drew my attention to the paragraph 4 of the

notes of the arguments submitted by the appellant before the Lower Appellate Court wherein it is stated that the appellant has been harassed by the learned Judge who deliberately signed the copy of the judgment and decree on 21.11.2016. Such remarks of the appellant are uncalled for which are without any basis. No doubt, it is difficult to fathom what the appellant means to convey in paragraph 3 of the application about which it has already been stated by the respondent in paragraph 3 of their reply. Nevertheless, it can be seen that the appellant is a senior citizen and a practicing lawyer who comes from Bombay to Goa for prosecuting his matters in the Court. Delay is merely of four days and, therefore, in view of the settled legal position liberal approach needs to be adopted and parties shall be allowed to contest the lis on merits. No doubt, the appellant could have obtained certified copy of the impugned judgment and order and could have preferred an appeal. That by itself would not be a reason to deprive him of with the remedy provided by way of an appeal especially in view of the fact that there was just a delay of four days, if at all it is stated to have been occasioned.

8. Upshot of the aforesaid observations is that the impugned

order dated 24.7.2017 is quashed and set aside and application for condonation of delay is allowed.

9. Consequently, the matter is remanded to the Lower Appellate Court with a direction to register the appeal and decide the same in accordance with law after giving due opportunity to the respective parties.

10. Parties are directed to appear before the Lower Appellate Court on 14.10.2019 at 2.30p.m.

11. Appeal stands disposed of in aforesaid terms with no order as to costs.

PRITHVIRAJ K. CHAVAN, J.

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