

IN THE HIGH COURT OF BOMBAY AT GOA
MISC. CIVIL APPLICATION NO. 316 OF 2018

1. State of Goa, through Chief Secretary, Government of Goa, Secretariat Building, Alto, Porvorim, Bardez, Goa.
 2. The Director, Revenue Department Panaji-Goa.
 3. The Director, Land Survey Department Panaji, Goa.
 4. The Deputy Collector, Mapusa, Sub Division, Mapusa, Goa.
 5. The Mamlatdar, Bicholim, Goa.
 6. The Talathi, Village Panchayat Maulinguem, Kudchirem, Maulinguem, Goa.
- ... Applicants

V e r s u s

1. Shri Gajanan Khedekar, s/o Late Sadashiv Khedekar, Major in age, married, Agriculturist, r/o. H.No.292, Naiguinim, Bicholim, Goa.
2. Smt. Mangala Alias Radhabai Gajanan Khedekar, d/o. Balwant Sahakari, Major in age, married, r/o. House no,.292, Naiguinim, Bicholim, Goa.
3. Shri Shripati Sadashiv Khedekar,
4. Smt. Kunda Shripati Khedekar, (Since Deceased) represented by Lrs. Both Major of age, Indian National, r/o. H.No.292, Naiguinim,

Kudchire, Bicholim, Goa.

- a) Smt. Girija Shripati Khedekar,
- b) Shri Rajesh Shripati Khedekar,
- c) Shri Neelesh Shripati Khedekar,
- d) Smt. Jyoshna Satish Deu,
- e) Shri Satish Chintamani Deu,
- f) Smt. Neesha Shivprasad Dessai,
- g) Shri Shivprasad Shamsunder Desai. ... Respondents

Ms. Priyanka Kamat, Additional Government Advocate for the Applicants.

Mr. J. J. Mulgaonkar, Advocate for the Respondents.

Coram :- C. V. BHADANG, J.
Reserved for Order on:- 22nd February 2019.
Order Pronounced on:- 18th March 2019.

ORDER

1. By this application, the applicants-State is seeking condonation of delay of 1036 days in filing an appeal challenging the Judgment and Decree dated 21.01.2015 passed by the learned District Judge at Mapusa in Civil Suit No.20 of 2004. By the said Judgment and Decree, the suit filed by the respondents for declaration as owners of the suit

properties bearing survey nos.197/1, 197/2, 204/3 and 204/4 of Village Kudchirem, has been decreed.

2. After the impugned judgment and decree was passed on 21.01.2015, the certified copy was applied for on the same day and it was ready for delivery on 23.01.2015. After obtaining the certified copy, a legal opinion was sought on 27.01.2015. However, the file continued to be processed through various Officers in the same Department from 27.01.2015 till 04.02.2017. The legal opinion was furnished on 12.02.2015 recommending an appeal to be filed. Accordingly, the file was submitted to the DSLR on 23.02.2015 who forwarded the said file to the Law Department. On 09.03.2015, the file was forwarded to the Revenue Department. The Revenue Department, despite there being a legal opinion, felt it appropriate for the DSLR to examine the said matter "from the legal perspective in view" and therefore the said file was referred to the Law Department again to examine and give opinion. It appears that after deliberations it was opined by the Law Department that there is no need to prefer an appeal. However, the file was again processed in the said Department. It appears that the file was again referred to Law Department on 08.04.2015 and kept on moving from one Department to the other and ultimately on 04.05.2015

when the file was received by the Under Secretary (legal), it was again opined that the matter appears to be fit for being challenged. It was at that point realised that limitation for filing the appeal had long expired. Even thereafter, the file kept on moving from one Department to another as set out in para 15 till December 2016 after which some time was taken to get certain documents translated. Ultimately, the appeal along with the application for condonation of delay was filed only on 17.12.2018 resulting into a delay of 1036 days in filing the appeal.

3. The application is opposed on behalf of the respondents on the ground that there is an inordinate delay in filing the appeal. It is submitted that although the certified copy was obtained within a short time after the delivery of the impugned Judgment and Decree, there was total absence of diligence in filing the appeal. It is pointed out that there were mutation proceedings filed by the respondents on the basis of the Decree in which the applicants were served and had raised an objection on 16.10.2015 for effecting mutation. The learned Mamlatdar by order dated 24.04.2017 dismissed the objections and effected the mutation nos.21384, 21385, etc. and thus the applicants were fully aware of the effect of the Judgment and Decree and still no action was taken.

4. I have heard Ms. Priyanka Kamat, learned Additional Government Advocate for the applicants-state and Mr. J. Mulgaonkar, learned Counsel for the respondents. Perused record.

5. It is submitted by Ms. Kamat, the learned Additional Government Advocate for the applicants that the length of the delay is not material and the Court has to look to the explanation. It is submitted that the matter was required to be examined by the Law Department and other Departments in order to take a decision about filing of the appeal and even after the decision was taken, the file was required to be processed through various departments, which has resulted in the delay which is unintentional. It is submitted that the applicants do not stand to gain by approaching the Court late and the delay deserves to be condoned. Ms. Kamat, the learned Additional Government Advocate for the applicants placed reliance on the order of the learned Single Judge of this Court in the case of **The Dy. Collector (SDO) & anr. vs. Shri Edgar F. Dias Valles** in **Misc. Civil Application No.190/2013** decided on 5th April 2013 and in the case of **The Deputy Collector (L.A.) & anr. vs. Mr. Isidore Gracias** in **Miscellaneous Civil Application No.872/2014** decided on 4th February, 2015.

6. On the contrary, Mr. Mulgaonkar, learned Counsel for the respondents has submitted that there is inordinate delay in filing the appeal arising out of gross negligence on the part of the applicant in filing appeal. It is submitted that the applicants have failed to show sufficient cause for not filing the appeal within time. On behalf of the respondents, reliance is placed on the decision of the Supreme Court in the case of **Postmaster General & Ors. vs. Living Media India Limited & anr. 2012 (3) SCC 563, Oriental Aroma Chemical Industries Limited vs. Gujarat Industrial Development Corporation & anr. 2010 (5) SCC 459** and the decisions of this Court in the case of **Executive Engineer & Ors. vs. Avinash Vyankatrao Joshi 2018 (3) Bom. C.R. 234** and **State of Goa vs. Rajaram N. S. Bandekar & Company Pvt. Ltd., & Ors. (MCA 208/2018 decided on 03.09.2018).**

7. I have carefully considered the rival circumstances and the submissions made. The Hon'ble Supreme Court in the case of **Postmaster General & Ors.** (supra) has held that the law of limitation binds everybody equally including Government and defence by Government of impersonal machinery and "inherited bureaucratic methodology" cannot be accepted in view of the modern technologies being used

and available. In the said case the condonation was sought on a similar ground of the movement of the file and the necessity for the file to be processed by various departments/officers and obtaining legal advice. The Hon'ble Supreme Court found that this cannot be a valid ground for condonation of delay. This is what is held in paras 28 and 29 of the Judgment :

"28. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bonafide, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government.

29) In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The government departments are under a special obligation to

ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.

8. In the present case, it is apparent that the State had initially taken a decision to file an appeal which was subsequently reviewed and the decision was taken not to challenge the judgment. However, the matter was again examined and it was decided to file an appeal. A careful perusal of the application filed by the applicants itself is sufficient to come to the conclusion that there is total lack of diligence or expedition in processing the matter and filing the appeal.

9. The Hon'ble Supreme Court in the case of **Esha Battacharya vs. Managing Committee of Raghunathpur Nafar Academy & Ors. 2013 (12) SCC 649**, after taking survey of various decisions holding the field has culled out the principles which are to be taken into consideration while considering the prayer for condonation of delay which are as under :

"21. (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.

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.

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

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.

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

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.

vii) The concept of liberal approach has to encapsule the conception of reasonableness

and it cannot be allowed a totally unfettered free play.

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.

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.

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.

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.

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.

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

(Emphasis supplied)

10. Thus, the Supreme Court has held that although a liberal view can be taken in respect of a delay of a short duration, the case of a substantial and a gross delay, needs a more stricter treatment. Thus, looking to the gross delay and the reason shown for the delay, where a similar reason was not accepted by the Supreme Court in the case of **Postmaster General & Ors.** (supra), I do not find that the applicants have made out a sufficient cause for not filing the appeal within limitation.

11. This Court in the case of Rajaram N. S. Bandekar (supra) has refused to condone the delay of 386 days while in the case of **Avinash Vyankatrao Joshi** (supra), this Court refused to condone the delay where the condonation was sought on the similar ground of the delay having occasioned because of the movement of the file and the obtaining of the legal opinion and obtaining approvals.

12. In the case of **Avinash Vyankatrao Joshi** (supra), reliance was placed on the Division Bench Judgment of this Court in the case of **State of Maharashtra & Ors. vs. Vithu Kalya Govari & Ors. 2008 (5) Bom. C.R. 323**, wherein it was observed that the State is not expected to be negligent or to take no action for years and let the matter become time barred on account of its negligence and inaction. It was held that the usual reason of “official hassles” or “approval at different levels” is hardly sufficient to justify condonation of delay of about two years. It was held that advantage had accrued to the non-applicants/claimants and the same cannot be withdrawn in a mechanical manner and that too without any sufficient cause being shown by the applicants.

13. The order dated 05.04.2013 in the case of **Edgar F. Dias** (supra) does not set out any facts on the basis of which the condonation of delay was sought. Thus, it is not possible to ascertain as to what were the circumstances which weighed with this Court while condoning the delay of 1718 days in the said case.

14. In the case of **Mr. Isidore Gracias** (supra) one of the circumstance, which weighed with this Court, was that First Appeals arising out of the same notification under Section 4(1)

of the Land Acquisition Act, were already filed and it was only after filing of the said other appeals that it was realised that there was no appeal which was preferred in the case of **Mr. Isidore Gracias** (supra). In the said case also, it is not possible to ascertain with any amount of precision, as what were the circumstances in paragraphs 2 to 9 of the application, on the basis of which, this Court condoned the delay. For this reason, the applicants cannot conceivably place reliance on the said two orders.

15. In the result, the application is hereby dismissed with no order as to costs.

C. V. BHADANG, J.

arp/*