

IN THE HIGH COURT OF BOMBAY AT GOA**MISC. CIVIL APPLICATION NO.257 OF 2019****IN****STAMP NUMBER MAIN NO.668 OF 2019**

Yogiraj Tulaskar & Anr.

.... Applicants

V/s

Indira Ramchandra Marathe,
by Power of Attorney
Jayant Vishnu Marathe

....Respondent

Ms. M. Viegas, Advocate for the Applicants.
Mr. Gaurish Agni, Advocate for the Respondent.**Coram : PRITHVIRAJ K. CHAVAN, J.****Date : 16th August, 2019****ORDER :**

By this application under Section 5 of the Indian Limitation Act, the appellants sought condonation of delay of 370 days which has occurred in filing the appeal mainly for the reason that the applicant no.1, who is 62 years old has been suffering from hypertension and diabetes since last ten years. It is stated that he has also been suffering from arthritis of left knee joint, recurrent cellulitis and eczema on left lower extremity, since last one and half year. He was bedridden and was unable to walk. He was undergoing treatment under the supervision of one Doctor Gopal Mangaonkar from Suman

Clinic, Mumbai.

2. It is submitted that the applicants/appellants have good case on merits and, therefore, for the aforesaid reason they have prayed for condoning the delay.

3. The application is opposed on behalf of the respondent vide reply dated 26/07/2019. It is stated that reasons for the delay as indicated in the application are false and misconceived. It is stated that if the applicant no.1 was undergoing treatment and was bedridden, applicant no.2 was not restrained from approaching the Court or the lawyer to prefer an appeal within the prescribed time.

4. It is submitted that the medical certificate filed on record does not indicate that the applicant no.1 was physically examined by the Doctor. If the applicant is a resident of Goa, it is curious to know how Doctor in Mumbai could certify the medical condition and supervise the day-to-day health issues of the applicant. For the said reasons, the respondent submits that application deserves to be dismissed.

5. Heard Ms. M. Viegas, learned Counsel for the applicants and Mr. G. Agni, learned Counsel for the respondent.

6. At the outset, it appears that the Doctor who alleged to have issued a certificate is a Homeopath and trained in acupuncture. It is difficult though not impossible to accept that a Doctor holding such a degree could treat so many ailments which necessarily required an expertise in a particular branch of medicine. Nevertheless, prima facie, it seems that the applicant no.1, who is about 62 years of old, has been suffering from certain ailments such as hypertension and diabetes which requires continuous supervision and medication. No doubt, the certificate does not indicate as to whether the applicant was, in fact, examined by the said Doctor. Certificate also does not indicate as to what kind of treatment or medicines have been prescribed for such various ailments.

7. The learned Counsel for the applicants has placed reliance on a judgment of the Hon'ble Supreme Court in case of *Ummer V/s. Pottengal Subida & Ors. (Civil Appeal Nos.2599-2600 of 2018)*. The Hon'ble Supreme Court has condoned the delay of 554 days. It is

observed that the appellant therein was suffering from prolonged illness during the period in question who was also an old man in his late sixties. He suffered a heart disease and was diagnosed with dengue fever also. He was hospitalized for the two ailments for a long period. In that case, the genuineness of the facts of ailments was not disputed. As such, the Supreme Court took a liberal view by stating that “sufficient cause” within the meaning of Section 5 has been shown and, therefore, condoned the delay.

8. Here, in the case at hand also what is disputed is certificate and not ailments. Merely, because the applicant chose to take the treatment from a Doctor, who is not so expert would not *epso facto* mean that he is not at all suffering from any of the ailments in view of his statement on affidavit.

9. As has been observed by the Supreme Court in the aforesaid judgment that if sufficient cause is shown, delay can be condoned and the appeal can be finally decided on merits.

10. In the light of the aforesaid observations, the delay of 370

days stands condoned subject to costs of ₹10,000/- to be paid to the respondent within two weeks from the date of passing of this order.

11. After payment/deposit of the costs, the appeal shall be registered.

12. The application stands disposed of in the aforesaid terms.

PRITHVIRAJ K. CHAVAN, J.

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