

IN THE HIGH COURT OF BOMBAY AT GOA

MISC.CIVIL APPLICATION NO. 248 OF 2016

IN

FIRST APPEAL NO. 339 OF 2003

DEPUTY CONSERVATOR OF FORESTS. ... Applicant

Versus

TIMBLO IRMAOS LTD., THR. ITS
CONSTITUTED ATTORNEY BALKRISHNA
SINAI KAKODKAR AND ANR. ... Respondents

Ms. Susan Linhares, Additional Government Advocate for the applicant.

Shri Usgaonkar Sudesh Manohar, Advocate for the respondent No.1.

Coram:- NUTAN D. SARDESSAI, J.

Date:- 7th February 2019

ORAL ORDER :

1. Heard Ms. S. Linhares, learned Additional Government Advocate who submitted that sufficient grounds were made out for condoning the delay and restoration of the appeal to file. She placed reliance in **Collector, Land Acquisition, Anantnag and another v/s. Mst. Katiji and others** [AIR 1987 SC 1353] and **N. Balakrishnan v/s. M. Krishnamurthy** [AIR 1998 SC 3222] to substantiate her

case. It was also her contention that on account of the lapse on the part of the Advocate the applicant should not suffer. In her submission, it was her case that costs could be imposed but the matter had to be restored to file after condoning the delay and as a large tracts of Government land was involved which would cause much loss to the exchequer in case the application was not allowed and the appeal restored to the file.

2. Shri Usgaonkar, learned Advocate for the respondents relied upon the reply filed and vehemently opposed the application for the condonation of delay and on his part placed reliance on **Salil Gupta v/s. T.M. and M.C. Pvt. Ltd.**[(1993)2 SCC 185].

3. i have heard both the learned Advocates and also considered the judgments cited before me.

4. In **N. Balakrishnan** (supra), a two Judge Bench of the Hon'ble Apex Court held that the order of the High Court in revision setting aside the order of the Trial Court condoning the

delay of 883 days in filing the application for the condonation of delay due to the failure of the Advocate to inform the appellant as well as his failure to take action was not proper and that the Court should compensate the opposite party in such cases more so where the appellant had secured the compensation from the delinquent Advocate. In the brief facts the suit filed by the respondent for the declaration of title and ancillary reliefs was decreed ex-parte on 28/10/1991. The Appellant, on coming to know of the decree moved an application to set it aside which came to be dismissed for default on 17/02/1993. He moved an application for setting aside the order only on August 19, 1995 for which there was a delay of 883 days alongwith an application for the condonation of delay by offering an explanation that he had engaged an advocate to make the motion to set the ex-parte decree aside but the Advocate failed to inform him that the application came to be dismissed for default on 17/02/1993. It is only when he got summons from the execution side on 05/07/1995 that he approached his advocate but he was told that perhaps the execution proceedings would have been taken by the decree holder since there was no stay against such execution proceedings.

5. In **N. Balakrishnan** (supra), he signed some papers including a Vakalatnama on the advice of the Advocate for resisting the execution proceedings, besides making the payment of Rupees Two Thousand towards the Advocates fees and other incidental expenses. The fact however was that the advocate did not do anything in the Court even thereafter. An execution warrant was issued by the Court and he became suspicious of the conduct of his advocate and rushed to the Court from where he got the disquieting information that his application to set aside the ex-parte decree stood dismissed for default as early as 17.02.1993 and that nothing was done in the Court thereafter. He also learnt that his Advocate has left the profession and joined as a legal assistant in some Company and therefore moved the application for setting aside the order. He also moved the District Consumer Disputes Redressal Forum, Madras North ventilating his grievance and claiming the compensation of ₹1,00,000/- from his erstwhile advocate which directed the said advocate to pay the compensation of ₹50,000/- to the appellant besides the costs of ₹500/-.

6. In **N. Balakrishnan** (supra), the Trial Court was pleased to accept the aforesaid explanation and condoned the delay but a

Single Judge of the High Court of Madras who heard the revision, expressed the view that the delay of 883 days in filing the application has not been properly explained, allowed the revision and set aside the order of the Trial Court while also dismissing the application for review giving rise to the appeal.

7. In **Salil Dutta** (supra), another two Judge Bench of the Hon'ble Apex Court held that improper advice of an Advocate cannot as a rule be accepted as a sufficient cause and it would depend on the particular facts and circumstances of the case. The suit was posted for final hearing after a lapse of seven years of its institution. None appearance of the defendant on the date of the final hearing was alleged to be on account of the advice of advocate. The defendant is a Private Limited Company having its registered office in the same city and is being managed by educated businessmen. The defendant's conduct was found to be non-cooperative with the Court and therefore in the facts it was held that the defendant's application under Rule 13 was not sustainable. It was further observed that putting the entire blame upon the Advocate and trying to make it out as if they were totally unaware of the nature or significance of the proceedings is a theory which cannot be accepted and ought not to have been

accepted.

8. Coming to the facts of the case it has been tried to be contended on behalf of the applicants that on account of the lapse of the Advocate then appearing on their behalf, the applicants should not suffer and as a large tracts of Government land was involved which would cause much loss to the exchequer in case the application for the condonation of delay was not allowed. However, having considering the judgment in **N. Balakrishnan** and **Salil Dutta** (supra) merely shifting the burden on the Advocate then appearing for the applicants by itself would not be a ground to condone the delay which is substantial. The applicant ought to have been more diligent in pursuing the matter and merely canvassing that there was a neglect on the part of the then Government Advocate even after the Court had granted umpteen opportunities to take steps cannot be countenanced.

9. It is apparent from the tenor of the application moved on behalf of the applicants that there was neglect on the part of the then Government Advocate in pursuing the matter which resulted in its dismissal and that too after the Court had

granted umpteen opportunities to the applicants to take steps to serve the unserved respondents. The applicants had tried to canvass a ground that the order dismissing the proceeding came to their notice only on making enquiries somewhere in December 2015 i.e. more than 15 months after the order came to be passed dismissing the case for non-prosecution. No genuine or justifiable grounds have been set out. It was the contention of Ms. S. Linhares, learned Additional Government Advocate that there was a change in the Department inasmuch as the land which was earlier vested in the Department of Forests later stood vested in the Department of Forests, Wildlife and Eco Tourism in 2010 and there was no track of the matter. In any event and even considering the judgment cited by her on behalf of the applicants, there is no justifiable reason for condoning the delay even considering at the highest that public money is involved and that the applicants would stand to suffer in case they were not allowed to pursue the matter to its logical conclusion. It is a case of sheer negligence on the part of the then Government Advocate appearing for the

applicants and which cannot be condoned looking to the track record of the file which indicates that ample opportunities were given to the applicants to take steps to serve the respondents. Although it has been brought to my notice that process fees were paid, nonetheless there was negligence on the part of the applicants not to pursue the matter further and when a learned Single Judge of this Court was constrained to grant a last opportunity and thereafter to identify the matter for dismissal and ultimately dismissed the same for non-prosecution and default on 3rd September, 2014.

10. No grounds have been made out for the condonation of delay and in view thereof, the application is accordingly dismissed.

NUTAN D. SARDESSAI, J.

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