

IN THE HIGH COURT OF BOMBAY AT GOA

MISC.CIVIL APPLICATION NO. 528 OF 2018

IN

STAMP NUMBER MAIN NO. 99 OF 2017

SAVIO CLOVIS DA COSTA AND ANR., ... Applicants

Versus

JOSE XAVIER MARTINS AND ANR., ... Respondents

Ms.Tanvi Kamat Ghanekar, Advocate for the Applicant.

Ms. D. Rodrigues, Advocate for the Respondents.

Coram:- NUTAN D. SARDESSAI, J.

Date:- 20th November, 2019

P.C.:

Heard Ms. Tanvi Kamat Ghanekar, learned Advocate for the applicant and Ms. D. Rodrigues, learned Advocate for the respondents.

2. It was the contention of Ms. Kamat Ghanekar that the impugned judgment came to be passed on 27.09.2016. She applied for the certified copy of the judgment on 07.10.2016 and the copy was delivered on 21.10.2016. The Second Appeal was filed on 10.01.2017. However, it was brought to her notice by the Registry that there was a delay of one day in filing the appeal and therefore, she moved the application for the condonation of

delay belatedly, since the party was not available on account of his pre-occupation. The delay was therefore, to be condoned as there was an arithmetical error in calculating the number of days in filing the appeal.

3. Ms. D. Rodrigues, learned Advocate submitted that the impugned judgment was passed on 28.09.2016 and not on 27.09.2016 and the Second Appeal was filed only on 10.01.2017 instead of 09.01.2017. There was a delay of 14 months in filing the application for the condonation of delay which was not at all accounted for nor justified by the applicant.

4. She placed reliance in *Maniben Devraj Shah Vs. Municipal Corporation of Brihan Mumbai*, {AIR 2012 SC 1629} in which it was observed as "it is axiomatic that the condonation of delay is a matter of discretion of the Court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as explanation thereof is satisfactory. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of

providing a legal remedy is to repair the damage caused by reasons of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit."

5. She also placed reliance in *Rajendra Namdeorao Akre Vs. Rajkumar Bhalerao Balbudhe & ors.*, {(2016) 1 MhLJ 184}, where it was held that "costs can be ordered subject to there being any reasonable ground to condone the delay. By imposition of costs, the requirement of furnishing sufficient cause cannot be dispensed with. Costs cannot be a substitute for absence of reasons to condone the delay". It was also her further contention that there was no material on record to explain when the Registry had informed the applicant about the delay nor there was any supporting affidavit of the applicant on record. In the circumstances therefore, the application has to be dismissed.

6. I have considered the contentions of Ms. Tanvi Kamat Ghanekar, learned Advocate for the applicant and Ms. D. Rodrigues learned Advocate for the respondent and besides also considered the judgments in *Maniben* and *Rajendra* (Supra). There can be no dispute with the proposition laid therein. It is however to be seen whether the same apply to the facts of the present case. Admittedly there was a delay of one day in filing the second appeal which apparently was on account of some

arithmetical calculation error as apparent from the contents of the application duly sworn by the party affirming its contents on oath. The contention of Ms. Kamat Ghanekar that she was informed by the Registry about the delay of one day in filing the appeal cannot also be brushed aside lightly and there is no reason to disbelieve her version as an officer of the Court, that she had tried to take steps promptly to see that the application was moved within time. It is however on account of the non availability of the applicant that the application for condonation of delay remained to be placed on record.

7. Last but not the least, the fact that the party would be legally bound to pursue his remedy would weigh with this Court and therefore, in the circumstances, i find that this is a fit case to grant the application. The application accordingly stands disposed off.

8. Registry to register the appeal.

NUTAN D. SARDESSAI, J.

MF/-