

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 54 OF 2018

State of Goa,

Through its Chief Secretary, having
office at Secretariat, Porvorim, Goa.

... Petitioner

V e r s u s

1. Mr. Rajaram Phadte,
(since deceased)
Through his legal representatives
1(a) Mrs. Apeksha Rajaram Phadte
(widow)

1(b) Mrs. Shubheshcha Gurudas
Shetye (daughter)

1(c) Mr. Gurudas Vithal Shetye
(son-in-law), All major of age,
resident of Flat No.S-4,
Padmashree Apartments, B Wing,
Khadpaband, Ponda, Goa.

1(d) Mrs Sabhyata Avinash
Mhapsekar, (daughter)

1(e) Mr. Avinash Mhapsekar (son
in law), Both major of age,
residents of Gdx2, ground floor,
J.F. Corriea Complex, Vidhyanagar,
Borda, Margao, Goa.

2. Suresh Pandurang Phadte,

Major of age, residing at House
no.135, Padeli, Sattari, Goa.

3. Chandrakant Ladu Naik,
Major of age, residing at House
No.577/A, Neogi Nagar,
Panaji, Goa. ... Respondents

Mr. Deep Shirodkar, Additional Government Advocate for the
Petitioner.

Mr. A. R. Kantak and Mr. Raunaq Kantak, Advocate for the
Respondent nos.2 and 3.

CORAM : C. V. BHADANG, J.

Reserved for Judgment on: 4th October, 2019.

Judgment Pronounced on : 21st November, 2019.

JUDGMENT

1. The challenge in this petition is to the order dated 21.06.2016 passed by the learned Adhoc District Judge, North Goa, Panaji, in Civil Misc. Application No.17 of 2014. By the impugned order, the learned District Judge has refused to condone the delay of six years ten months and 28 days in filing an application for restoration of an appeal.

2. The brief facts necessary for the disposal of the petition may be stated thus :

Now deceased, Rajaram Phadte, filed an application under Section 14(3) of the Goa, Daman and Diu Land Revenue Code, 1968, (Code, for short) for correction of the survey record in respect of land survey no.20/1 of Village Padeli, Sattari Taluka, in which the State of Goa was shown as the occupant. Rajaram Phadte sought correction of the survey record by incorporating his name as the occupant in the place of State of Goa. The learned Deputy Collector by an order dated 24.07.1989 allowed the application directing such correction which was unsuccessfully challenged by the petitioners before the Administrative Tribunal in Land Revenue Appeal No.16 of 1989 which was dismissed on 12.02.1992.

3. It appears that the petitioner thereafter filed Civil Suit No. 74 of 2001/A (Old Civil Suit No.83 of 1992/A) on 28.09.1992 for a declaration that the petitioner is the owner of the suit

property/suit portion and other consequential reliefs. The learned Senior Civil Judge at Bicholim, by a judgment and decree dated 11.01.2002, dismissed the suit. The petitioner challenged the same before the learned Adhoc District Judge at Panaji in Regular Civil Appeal No.24 of 2002. During the pendency of the said appeal, the learned Additional Government Advocate Mr. G. D. Kirtani filed an application on 13.02.2007 for withdrawal of the appeal. It was contended that the suit property has been sold by Rajaram Phadte under two separate Sale Deeds in favour of Mr. Suresh Pandurang Phadte and Mr. Chandrakant Ladu Naik on 24.03.1992 i.e. much prior to the filing of the suit. It was claimed that the purchasers are in enjoyment and possession of the suit property. It was also contended that the purchasers not being parties to the suit, even if the suit is decreed, the same would not be enforceable against the said purchasers. It was claimed that in such circumstances, the petitioner has no other alternative than to withdraw the appeal. Mr. Rajaram Phadte obviously gave no objection for such withdrawal. The learned

Adhoc District Judge by an order dated 13.02.2007, dismissed the appeal as withdrawn. The petitioners did not take any further action in the matter for quite sometime. The order dated 13.02.2007, was sought to be challenged for the first time in Writ Petition No.402 of 2013 before this Court. This Court disposed off the said petition on 03.10.2013 finding that the petitioner has to approach the Court which passed the order in getting the appeal restored. In that view of the matter, the petitioners filed an application for restoration along with an application for condonation of delay of more than six years and ten months in seeking such restoration. It was contended that the withdrawal by the concerned Government Counsel was without any authority. For the said purpose, reliance was placed on the Circular dated 15.10.2001 which says that such withdrawal has to be sought under the signature of the Chief Secretary of the State and not otherwise.

4. The application was opposed on behalf of the first respondent.

5. The learned Trial Court by the impugned order has refused to condone the delay. Hence this petition.

6. It may be mentioned that Rajaram Phadte has since expired on 21.07.2016 and is succeeded by the respondent nos.1(a) to 1(e). It is significant to note that Suresh Phadte and Chandrakant Naik, the purchasers of the suit property, were neither made parties to the application for restoration or condonation of delay nor in this petition as originally filed. It is by virtue of an amendment, they came to be added as respondent nos.2 and 3, on 18.07.2019.

7. I have heard Mr. Shirodkar, the learned Additional Government Advocate for the State and Mr. Kantak, the learned Counsel for the respondent nos.2 and 3. None appears for the respondent nos.1(a) to 1(e). Perused record.

8. Mr. Shirodkar, the learned Additional Government Advocate, has strenuously urged that the withdrawal of the appeal by the then Government Counsel was entirely without authority and, as such, the withdrawal of the appeal particularly which was in breach of the requirement of the Circular dated 15.10.2001 was unjustified and could not have been allowed. It is submitted that there was some delay in challenging the said order which was initially challenged before this Court in Writ Petition No.402 of 2013 which was disposed off by observing that the petitioner has to approach the concerned Court for restoration of the appeal. It is submitted that the delay in filing the application for restoration was unintentional and in the absence of any negligence, the delay ought to have been condoned. The learned Additional Government Advocate in this regard has placed strong reliance on the Circular dated 15.10.2001. It is submitted that the valuable rights of the State relating to the suit property are involved and, therefore, in the interest of justice, the delay be condoned and the

application for restoration be directed to be heard on its own merits.

9. Mr. Kantak, the learned Counsel for the respondent nos.2 and 3, has submitted that these respondents have purchased the suit property under two separate registered Sale Deeds dated 24.03.1992 i.e. much prior to the filing of the Civil Suit. It is pointed out that these respondents were never parties to the suit nor to the application for restoration or condonation of delay. It is submitted that even otherwise, no case for condonation of the gross delay is made out. It is submitted that there is total lack of diligence on the part of the petitioner in prosecuting the appeal and seeking its restoration. It is submitted that it is not shown that the petitioner had taken any action against the concerned Government Advocate. It is submitted that if the delay is condoned, it would seriously affect the rights of the respondents.

10. I have carefully considered the rival circumstances and the submissions made and I do not find that any case for interference

is made out. The facts as set out above, speak for themselves, of the petitioner, having not acted with due diligence at any stage of the proceedings. For the present, I am only concerned with the issue of condonation of delay of about six years and ten months in filing an application for restoration of the appeal. There is nothing on record to show that the Circular dated 15.10.2001 was brought to the notice of the learned District Judge when the order dated 13.02.2007 was passed, dismissing the appeal as withdrawn. After this order was passed, no steps were taken till the year 2013 when the said order was challenged before this Court in Writ Petition No.402 of 2013 which was disposed off by observing that the petitioner has to approach the concerned Court. It is thereafter that the application for restoration was filed along with the application for condonation of delay without impleading the respondent nos.2 and 3 as party-respondents. It is significant to note that from the application dated 13.02.2007 itself, it is clear that the petitioner was aware that the suit property has been transferred in favour of Suresh Phadte and

Chandrakant Naik and, therefore, there is no reason forthcoming as to why the said respondents were not made parties in the said application. Even before this Court, in the petition as originally filed, they were not made parties. It is also not the case that any action was taken against the concerned Government Advocate, if according to the petitioner, the action of the Government Advocate of withdrawing the appeal, was unauthorised.

11. The Supreme Court in the case of **Esha Bhattacharjee vs Managing Committee of Raghunathpur Nafar Academy, (2013) 12 SCC 649**, has held that there is a distinction between an inordinate delay (as in the present case) and the delay of short duration or few days. It has been held that although the Court can take a liberal approach in case of delay of short duration, a case of gross delay requires a strict approach to be taken. It has been held that lack of bonafides is a significant and relevant fact. It has further been held that the increasing tendency to pursue delay as a non-serious matter, cannot be accepted.

12. The Supreme Court in the case of **Office of the Chief Post Master General & ors. vs. Living Media India Ltd. & anr.** (2012) 3 SCC 563, has held that the law of limitation binds everybody including the Government. In that case, the Supreme Court had refused to condone a delay of 427 days on the ground of the time taken in processing the proposal at various hierarchyal levels.

13. Considering the over all circumstances, I do not find that the petitioner has made out 'sufficient cause', for condonation of delay. I have carefully gone through the impugned order and it does not suffer from any infirmity so as to require interference.

14. The petition is without any merit and is accordingly dismissed with no order as to costs.

C. V. BHADANG, J.

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