

**IN THE HIGH COURT OF BOMBAY AT GOA****MISC.CIVIL APPLICATION NO. 986 OF 2018  
IN  
STAMP NUMBER MAIN NO. 2805 OF 2018****STATE OF GOA, THR. ITS CHIEF  
SECRETARY AND 3 ORS.,****... Applicants****Versus****XACUNTALA PINTO MAKHIJA AND ANR., ... Respondents**

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

Adv. Shivan Desai, for Respondent no.1.

Mr. S. D. Lotlikar, Senior Advocate with Adv. Neelesh Amonkar for the Respondent no.2.

**Coram:- C. V. BHADANG, J.****Date:- 17th June 2019.****Order:**

This is an application for condonation of delay of 289 days in filing an First Appeal.

2. The respondents had filed Civil Suit no.24/2013 against the applicants (defendants nos1 to 4) and one Mr. Teofilo Fernando Antonio Pinto (defendant no.5). That was a suit for declaration of title in respect of 5446

sq.mtrs of land from out of property bearing chalta no.75 of P.T. Sheet.78 of Panaji. The suit was resisted by the applicants. The learned trial court by a judgment and decree dated 31/8/2017 decreed the suit declaring the original plaintiffs along with defendant no.5 as the exclusive lawful owner of the suit property. Feeling aggrieved, the applicants are desirous of filing a first appeal, which is delayed by 289 days.

3. After the suit was decreed on 31/8/2017, a certified copy of the judgment and decree was applied for on 1/9/2017. The copy was ready on 7/9/2017. The prescribed period of 90 days for filing the appeal expired on 5/12/2017. However, the appeal along with the application for condonation of delay came to be filed on 21/8/2018.

4. The case made out by the applicant in explaining the delay is that on 8/11/2017, the applicant's office received the legal opinion of the Government Advocate and immediately thereafter on 9/11/2017, a note was put up to the Law department. The file was routed through the office of the Superintending Engineer, Chief Engineer and the Principal Chief Engineer on the same day. On 10/11/2017, the Executive Engineer (Legal), received the file and forwarded the same to the Law Department, which was received in the Law department on 13/11/2017. The Law Department put up its noting

and the file was forwarded to the Principal Engineer again on 1/12/2017, who then forwarded the file to the Office of Chief Engineer (II) on 8/12/2017 and subsequently to the Superintending Engineer on 12/12/2017. The file then moved to the office of the Assistant Engineer on 18/12/2017, then to the Executive Engineer on 18/12/2017 and then to the Superintending Engineer on 20/12/2017. On 28/12/2017, the file was again put up to the office of the Chief Engineer (II) and then to the Principal Chief Engineer on 1/1/2018. On 2/1/2018, the office of the Executive Engineer (Legal) received the file and the same was forwarded to the office of the Superintending Engineer on 3/1/2018, who made his noting and the file was forwarded to the office of the Executive Engineer and then to the office of the Asst. Engineer on 4/1/2018.

5. On 10/1/2018 a letter was sent to the District Superintendent of Land Records (DSLRL) with a request to submit the details as per the noting at Page 4/N to 8/N. A reminder was sent to the DSLRL on 8/2/2018 and the DSLRL eventually replied, forwarding the necessary documents on 14/2/2018. The file kept on moving between the office of the Asst. Engineer to the office of the Superintending Engineer and was ultimately sent to the Law department on 20/2/2018, who again put up its notings and then forwarded the same to the Principal Chief Engineer on 15/3/2018. The file then moved to the office of Chief Engineer (II) on 16/3/2018 and again to the office of the

Superintending Engineer on 19/3/2018 and then back to the office of the Ex. Engineer and the Assistant Engineer who received the file on 23/3/2018. Thereafter a letter was sent to the Government Counsel on 29/3/2018. The Government Counsel forwarded additional legal opinion on 19/4/2018, which was forwarded to the Executive Engineer on 20/4/2019 and then to the Law department on 24/4/2018. Thereafter, again the file kept on moving to various departments and on 2/5/2018, it was finally put up to the Secretary (PWD) for government approval for filing an appeal. Finally on 10/5/2018, the Hon'ble Minister for PWD put his noting and the file was forwarded to the office of the Principal Chief Engineer on 16/5/2018 and then to the office of the Superintending Engineer, on 18/5/2018 and to the Executive Engineer on 21/5/2018 and to the Assistant Engineer on 24/5/2018. Again the file went up to the office of the Superintending Engineer, on 25/5/2018, then to the office of the Chief Engineer on 25/5/2018 and the office of the Principal Chief Engineer on 26/5/2018.

6. Paragraph 13 of the the application shows that the file was again put up to the Secretary (PWD) by the Principal Chief Engineer and the file was eventually sent to the Advocate General on 29/5/2018 and thereafter the present application came to be filed on 21/8/2018. The various dates and the movement of the file has been reproduced, only to show that the only ground

on which the condonation of delay is sought is on account of the movement of the file to the various departments. The application is conspicuously silent as to under what circumstances the file was required to be moved between various hierarchical officers from the Asst. Engineer to the Principal Chief Engineer and the Secretary (PWD).

7. The learned Additional Government Advocate faced with these difficulty was granted time to produce the office noting. The learned Additional Government Advocate has produced a copy of the office noting from page 9 onwards. I have gone through the same.

8. Ms. Linhares, the learned Additional Government Advocate for the applicant has placed reliance on the decision of the Supreme Court in the case of **State of Nagaland Vs. Lipok AO and others, 2005 3 SCC 752** and (ii) **Executive Officer, Antiyur Town Panchayat Vs. G. Arumugam (D) by Lrs, 2015 3 SCC 569**, in order to submit that the Government which operates through various hierarchical officers and departments has to be given some reasonable latitude. It is submitted that there is no negligence or lack of diligence on the part of the officers in not filing the appeal within time and the applicant does not stand to gain by approaching the court late. It is submitted that the Hon'ble Supreme Court in the case of **G. Arumugam (D)**

(supra) has held that if the Court finds that the delay has occasioned on account of deliberate lapses on the part of the concerned officials, the courts must take a justice oriented approach and condone the delay in the larger public interest.

9. Mr. Lotlikar, the learned Senior Counsel for the respondent has submitted that there is no acceptable explanation showing sufficient cause for not filing the appeal within time. It is submitted that existence of sufficient cause is a *sine qua non* for condonation of delay. It is submitted that except the ground of movement of the file through various offices and departments there is no other explanation forthcoming for the applicants approaching the Court late. The learned Senior Counsel has placed reliance on the decision of the Supreme Court in the case of **Postmaster General and others Vs. Living Media India Ltd. And anr. (2012) 3 SCC 563**, **Maniben Devraj Shah Vs. Municipal Corporation of Brihan, Mumbai (2012) 5 SCC 157**, and the decision of this Court in **State of Goa Vs. Rajaram N. S. Banekar & Company P. Ltd. (MCA no.208 of 2018 decided on 3/9/2018)**.

10. I have carefully considered the rival circumstances and the submissions made.

11. As noticed earlier, the only ground on which the condonation of delay is sought is the time spent in the movement of the file between various hierarchical officers of the concerned department. The application is silent about the circumstances in which the file was required to be moved between the various officers from Asst. Engineer to the Principal Chief Engineer. The office notes produced during the course of the hearing show that the last noting is of 25/5/2018, while the application for condonation of delay is filed on 21/8/2018. For this part of the delay, there is no explanation forthcoming.

12. The Supreme Court in the case of **Post Master General (supra)** has held that the usual explanation that the delay has occasioned on account of movement of the file cannot be accepted. A similar view has been taken in the case of **Maniben Devraj Shah (supra)**.

13. The Supreme Court in the case of **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy & others (2013) 12 SCC 649**, after taking a survey of several decisions holding the field has culled out the principles which are germane, while considering a plea for condonation of delay. The principles are set out in paras 21 and 22 of the judgment. The Supreme Court has drawn a distinction between gross delay and a delay of short duration or few days. It has been held that although a liberal approach

may be taken in case of a delay of short duration, gross delay warrants strict approach. The delay in the present case cannot be said to be of a short duration. It has been further held that the concept of liberal approach cannot be allowed a totally unfettered free play. Applying the principles as laid down in the case of **Esha Bhattacharjee (supra)** in my considered view, the delay in the present case has not been satisfactorily explained.

14. Ms. Linhares, the learned Additional Government Advocate has placed strong reliance on the decision of the Supreme Court in the case of **Lipok A.O (supra)**, in which there was a delay of 57 days in approaching the High Court in filing a criminal appeal against acquittal. The said judgment has been referred to by the Supreme Court in the case of **Post Master General (supra)** as also in the case of **Maniben Devraj Shah**. In para 18 of the judgment in the case of **Post Master General**, the Supreme Court has distinguished the judgment in the case of **Lipok AO (supra)** as under :

“In **State of Nagaland vs. Lipok AO**, this Court, while reiterating the principle that latitude be given to the Government's litigation, allowed the appeal filed by the State of Nagaland. It is also relevant to note that this matter relates to criminal jurisdiction and delay in filing the SLP was only 57 days.”

15. It is necessary to emphasize that as held by the Supreme Court in the

case of **Esha Bhattacharjee**, a liberal approach may be adopted in the case of a delay of short duration as was the case in **Lipok AO (supra)**.

16. Next reliance is placed on the judgment of the Supreme Court in the case of **G. Arumugam (supra)**. That was a case where the condonation of delay was sought on the ground that there was deliberate lapse on the part of the concerned Executive officer of the Panchayat at the relevant time, who was placed under suspension on allegations of corruption. It can thus be seen that it was a case where the State had sought condonation on the ground of a deliberate lapse on the part of the concerned executive officer. It was in these circumstances held that if the Court is convinced that there had been an attempt on the part of the Government Officials or public servants to defeat justice by causing delay, the Court in view of larger public interest should take a lenient view and condone the delay, howsoever huge the delay may be.

17. The condonation of delay in the present case is not sought on the ground of any such deliberate lapse by any officers of the Government. In my humble view the decision in the case of **G. Arumugam (supra)** is clearly distinguishable on facts.

18. Considering the overall circumstances, I do not find that the delay has

been satisfactorily explained. The application is accordingly dismissed with no order as to costs.

**C. V. BHADANG, J.**

**ap/-**