

IN THE HIGH COURT OF BOMBAY AT GOA**MISC.CIVIL APPLICATION NO. 18 OF 2019
IN
FIRST APPEAL NO. 52 OF 2006****STATE OF GOA, THROUGH ITS CHIEF
SECRETARY.,****... Applicant****Versus****SAZU RAGHOBASINAI NADKARNI AND
ANR.,****... Respondents**

Ms. Susan Linhares, Addl. Government Advocate for the Applicant.
Mr. S. D. Lotlikar, Senior Advocate with Adv. S. Kenny for
Respondent no.1(a-e)

AND**MISC.CIVIL APPLICATION NO. 19 OF 2019
IN
FIRST APPEAL NO. 52 OF 2006****STATE OF GOA, THROUGH ITS CHIEF
SECRETARY.,****... Applicant****Versus****SAZU RAGHOBASINAI NADKARNI AND
ANR.,****... Respondents**

Ms. Susan Linhares, Addl. Government Advocate for the Applicant.

Coram:- C. V. BHADANG, J.
Date:- 28th August, 2019.

P.C.:

These applications are filed for condonation of delay, setting aside

abatement and for bringing legal representatives of the deceased respondent nos.1 and 2 on record, in First Appeal no.52/2006 which was disposed off as abated on 9/5/2013.

2. The brief facts are that, the respondents filed Regular Civil Suit no.51/1996 against the applicant for declaration that they are the owners of land survey no.16/4 of village Xelpem, by prescription and for some consequential reliefs. The learned Senior Civil Judge at Quepem by a judgment and decree dated 24/12/2001 decreed the suit thereby declaring the respondents as the owners of land survey no.16/4 of village Xelpem and for consequent rectification of the entries in the record of rights.

3. Feeling aggrieved, the applicant filed Regular Civil Appeal no.58/2005 before the learned District Judge at Margao. It appears that on account of an amendment to the Civil Courts Act, the appeal came to be transferred to this Court and was registered as First Appeal no.52/2006. On 5/5/2006 after hearing Ms. R. Chodankar Agha for the applicant the appeal came to be admitted. It appears that the original plaintiffs Sazu alias Prabhaker Ragoba Sinai Nadkarni died on 4/12/2010, while Chandrabhaga alias Kamlabai Nadkarni expired on 4/12/2011. However, no steps were taken to bring their legal representatives on record.

4. On 9/5/2013, this Court passed the following order in the First Appeal :

1. It is reported that both the respondents have expired some time in the year 2010/2011. Copies of death certificates have been placed on record by the learned Counsel then appearing for the said respondent.
2. No steps have been taken for bringing legal representatives of the deceased respondents on record.
3. The appeal is abated and hence accordingly stands disposed of.”

5. It appears that an application for mutation was made on the basis of the impugned judgment and decree somewhere on 25/2/2015 and the mutation was accordingly carried out and certified. According to the applicant the fact that the appeal was disposed off as abated came to the knowledge of the applicant somewhere in year 2015 when the application for mutation was made. The Director of Settlement and Land Records on 27/2/2017 wrote to Advocate Mahindra Gawas requesting him to take necessary steps for setting aside abatement and for restoration of the appeal. It is after this that the present applications came to be filed on 10/10/2018 .

6. According to the applicant there is a delay of 2784 days and 2419 days respectively in filing the application for setting aside abatement and a delay of 2754 days and 2389 days in bringing the legal representatives of the deceased respondent nos.1 and 2 on record which according to the applicant

is not deliberate or intentional. The applicant has prayed for condonation of delay mainly on the ground of an impersonal machinery and the time taken for movement of the file.

7. The respondents have opposed the application. It is contended that there is total lack of diligence on the part of the applicant in prosecuting the appeal and thereafter for setting aside abatement, although on their own saying, the applicant was aware of the disposal of the first appeal in the year 2015.

8. I have heard Ms. Linhares, the learned Additional Government Advocate for the applicant and Mr. Lotlikar, the learned Senior Counsel for the respondents. Perused record.

9. Ms. Linhares, the learned Additional Government Advocate has submitted that the delay is neither on account of any lack of diligence nor it is intentional. It is submitted that the appeal after its admission was kept sine die and the applicant was not aware of the death of the respondents and no steps, as such could be taken for bringing their legal representatives on record. It is submitted that the applicant came to know about the disposal of the first appeal as abated in the year 2015, when an application was moved

for mutation on the basis of the impugned judgment and decree. It is submitted that thereafter steps were taken to move the proposal for restoration of the first appeal and some time was taken to process the proposal and the delay in such a case according to the learned Additional Government Advocate deserves to be condoned.

10. Mr. Lotlikar, the learned Senior Counsel for the respondent has submitted that there is gross delay and laches on the part of the applicant both in prosecuting the first appeal as well as in moving for setting aside abatement and restoration of the first appeal. It is pointed out that the fact that the original respondent had expired was brought on record by the advocate then appearing for the respondent in the first appeal as early as on 9/5/2013 and thus the claim on behalf of the applicant that they were not aware of the death of the respondent nos.1 and 2 is clearly not acceptable. The learned counsel has submitted that after the mutation entries were certified the legal representatives after waiting for a period of two years have executed a sale deed dated 12/10/2017 in favour of the third parties and the name of the purchasers is duly entered in the occupant's column in the year 2018. It is thus submitted that in the interregnum third party rights are already created and the application for restoration of the appeal after setting aside abatement cannot be allowed. The learned Senior Counsel has placed reliance

on the decision of the Supreme Court in the case of **Balwant Singh (dead) Vs. Jagdish Singh and others (2010) 8 SCR 597.**

11. I have considered the circumstances and the submissions made. There is a gross delay of more than 2000 days in bringing the legal representatives of the deceased respondents on record and in moving for setting aside abatement of the appeal. The record discloses that the appeal was admitted in the year 2006 in the presence of the learned Additional Government Advocate. The record also discloses that the factum of the death of the respondent was brought on record on 9/5/2013. Still no steps were taken to bring their legal representatives on record. Even after the appeal was disposed off on 9/5/2013, no steps were taken for recall of the said order and for restoration of the appeal. Last but not the least even after the applicant claims that the disposal of the first appeal came to its knowledge in the year 2015 when the mutation proceedings were filed, even thereafter, the present applications are filed on 11/10/2018. The reason for this last part of the delay is movement of the file and an impersonal machinery.

12. The Hon'ble Supreme Court in the case of **Office of the Chief Post Maser General vs. The Living Media India Ltd & anr. (2012) 3 SCC 563** had an occasion to consider a prayer for condonation of delay on a similar

ground. It was held that the time spent in movement of the file cannot be a valid ground for condoning the delay. That apart, even according to the applicant although the notice was received in the mutation proceedings in the year 2015, the Director of Land Records wrote to Advocate Mahendra Gawas to take steps for setting aside abatement only on 27/2/2017. The circumstances as borne out from the record make it writ large that there is clear lack of diligence on the part of the applicant in prosecuting the appeal as well as from getting the order of disposal of the appeal set aside with any promptitude.

13. In the case of **Balwant Singh (supra)**, the Supreme Court found that the delay of 777 days in bringing the legal representatives of the deceased appellant on record was not fit to be condoned. It has been held that the law of limitation is a substantive law and has definite consequences on the right and obligation of a party and once a valuable right is accrued in favour of an adversary, as a result of the failure of the other party to explain the delay by showing sufficient cause, such a right cannot be lightly interfered with, particularly when the delay is directly a result of negligence, default or inaction of the party.

14. In the present case, there is one more circumstance which dis-entitles

the applicant from getting the delay condoned. The record discloses that after the mutation entries were certified in the year 2015, a sale deed came to be executed by the legal representatives of the respondents in respect of the suit property in favour of a third party in the year 2017 and thus not only that the rights of the respondents which had accrued to them by treating the judgment and decree of the trial court as final, but even the rights of the third party would be affected which cannot be lightly interfered with.

15. Considering the overall circumstances, I find that the applicant has failed to establish sufficient cause for condonation of delay in bringing the legal representatives on record and in getting the abatement of the first appeal set aside. The application is without any merit and is accordingly dismissed with no order as to costs.

C. V. BHADANG, J.

ap/-