

IN THE HIGH COURT OF BOMBAY AT GOA**MISC.CIVIL APPLICATION NO. 33 OF 2019
IN
STAMP NUMBER (APPLN.) NO. 2450 OF 2014****CARIDADE RODRIGUES AND ANR., ... Applicants****Versus****DOMINGOS FERNANDES AND ANR., ... Respondents**

Shri S. D. Lotlikar, Senior Advocate with Adv. J. Karn for the Applicants.

Shri M. B. D'Costa, Senior Advocate with Ms. K. Betquecar for the Respondent.

CORAM: C. V. BHADANG, J.
Reserved on: 16/04/2019
Pronounced on: 18/04/2019

ORDER:

This is an application for condonation of delay of 665 days in challenging the order by which two civil application being Stamp no.2450 of 2014 and 2449 of 2014 have been dismissed for want of removal of office objections.

2. The brief facts are that the respondents had filed Regular Civil Suit no.39/03/C against the applicants before the learned Civil Judge, Junior

Division at Panaji, for declaration and consequential reliefs. The respondents had inter alia sought a declaration that the the Deed of Gift dated 20/1/1983 executed by Pedro Antonio Dias in favour of the appellant no.2 .Mr. Maria Santana Simplista Dias e Rodrigues is null and void and for cancellation of the registration of the said Deed of Gift.

3. The learned trial court dismissed the suit on 6/5/2006, which was challenged by the respondents, before the learned District Judge in Regular Civil Appeal no.39/2006. The learned District Judge allowed the appeal on 18/3/2008 thereby decreeing the suit filed by the respondents, which was challenged by the applicants herein before this Court in Second Appeal no.88/2008. This Court dismissed the Second Appeal on 26/6/2014.

4. It appears that the applicants filed Civil Review Application Stamp no.2449/2014 along with an application Stamp no.2450/2014 for condonation of delay in filing the review application. The office had notified certain office objections and the matter was listed before the Dy. Registrar of this Court on 14/11/2014, 28/11/2014, 9/1/2015, 30/1/2015, 20/1/2015, 20/2/2015 and 20/2/2015. On all these dates, time was sought on behalf of the applicants to remove the office objections which was granted. The record shows that the Dy. Registrar had granted last and final opportunity on 20/11/2014, 9/1/2015

and 30/1/2015 to remove the office objections. Ultimately on 20/2/2015, again the learned Dy. Registrar granted last and final opportunity and made a conditional order stating that if the office objections are not removed, within a period of two weeks, the registration of the applications shall stand refused.

5. The applicant filed MCA no.153/2016 challenging the conditional order dated 20/2/2015 passed by the learned Dy. Registrar of this Court and for restoration of the application no.2449/2014. This Court allowed MCA no.153/2016 on 21/4/2016. A perusal of the said order shows that a statement was recorded on behalf of the applicant that all the office objections shall be cleared within two weeks. In such circumstances, this Court while restoring the application, directed the applicants to clear all the office objections within two weeks. Even thereafter, the office objections were not removed and on the request made on behalf of the applicants, time was extended by one week as a last chance on 16/6/2016. The objections were not removed.

6. The applicants filed yet another application being MCA no.319/2016 for setting aside the order of the learned Dy. Registrar dated 20/2/2015 and for restoring the application Stamp no.2450/2014. This Court issued a notice in the said application on 13/10/2016. However, the applicants failed to pay

the process fee. Hence, the matter was listed before the Court on 15/12/2016, on which date, this Court (Smt. R.P. Sondur Baldota, J) granted one week's time to pay the process fee and stipulated that in the event of failure thereof, the application would stand dismissed, without reference to Court. It appears that inspite of this order, the process fee was not paid and eventually the Dy. Registrar only recorded that the application stood dismissed in view of the order dated 15/12/2016.

7. Now the present application is filed on 15/10/2018 for condonation of delay of 665 days in challenging the order of dismissal of the two application i.e application Stamp no.2450 of 2014 and 2449 of 2014.

8. I have heard Mr. Lotlikar, the learned Senior Counsel for the applicants and Shri D'Costa, the learned Senior Counsel for the respondents. Perused record.

9. Mr. Lotlikar, the learned Senior Counsel for the applicants submitted that failure to comply with the office objections was not intentional and was on account of inadvertence of the office boy to pay the process fee. It is submitted that the advocate for the applicant was under impression that the requisite process fee is paid and thereafter awaited the matter to be listed and

“unintentionally lost track of the matter”. It is submitted that it is only in the month of September 2018 the applicants approached the office of the Advocate to inquire about the status of the review application, when it transpired that the applications have been dismissed on 15/12/2016. It is submitted that the delay is unintentional and may be condoned. The learned Senior Counsel submitted that the respondent can be compensated by imposing reasonable costs.

10. Mr. D'Costa, the learned Senior Counsel for the respondents has opposed the application. It is submitted that there is gross negligence and inaction on the part of the applicants in filing and getting the civil review application registered and to pursue the same. It is submitted that even after the registration of the applications was refused, there is a gross delay of 665 days in seeking restoration of the two applications and the applicants have failed to demonstrate sufficient cause.

11. I have carefully considered the rival circumstances and the submissions made. Normally, this Court would take a liberal view, in restoring matters which are dismissed or where the registration of such matters is refused for want of compliance with certain office objections. However, this is a case which demonstrates gross negligence and absence of diligence on the part of

the applicants, indicating the absence of bona fides on the part of the applicants in prosecuting the application for review. The facts as set out above which are matters of record would indicate that inspite of grant of sufficient opportunities the applicants failed to comply with the office objections. In fact this Court by virtue of the order dated 21/4/2016 in MCA no.153/2016 had granted indulgence and had restored the application Stamp no.2449/2014 on the basis of a statement on behalf of the applicants that the office objections would be cleared within a period of two weeks. Even thereafter, time was granted to clear the office objections, which was not done. This is not the end of the matter. Although the applications were dismissed/ the registration was refused, no action was taken for a substantial period of time resulting into a delay of 665 days in seeking restoration of the applications. The reason shown for the delay to my mind is not acceptable and fails to make out a 'sufficient cause', for condoning the delay. It is now well settled that the existence of a sufficient cause is a *sine qua non* for an order of condonation of delay in approaching the Court and the delay cannot be condoned merely on equitable grounds. The record shows that the respondents had filed a suit as far back as in the year 2003 and the matter had attained finality when the second appeal was dismissed on 26/6/2014. The respondents are justified in assuming that the matter had reached finality and that cannot be lightly brushed aside or interfered with. Even the imposition of

costs to my mind, would not be an adequate compensation, particularly when the applicants have failed to show 'sufficient cause' in the matter and on the contrary the record discloses gross inaction and lack of diligence on the part of the applicants.

12. The Hon'ble Supreme Court in the case of **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others (2013) 12 SCC 649** after taking survey of several decisions holding the field has culled out the principles governing a prayer for condonation of delay (see para 21 of the judgment). One of the circumstances which is relevant is whether the application is bona fide or not. The facts as obtaining in the present case not only show that there is gross inaction on the part of the applicants and absence of due diligence and sufficient cause, they also are indicative of lack of bona fides on the part of the applicants.

13. Para 21.5 of the judgment shows that lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant factor. If the explanation offered is concocted or the grounds urged in the application are fanciful, the Court should be vigilant not to expose the other side unnecessarily to face such litigation. The Supreme Court has also held that the increasing tendency to perceive delay, as a non serious matter, requires to

be curbed, of course, within legal parameters.

14. Considering the overall circumstances, I do not find that the applicants have made out sufficient cause for condoning the delay. The application is without any merit and is accordingly dismissed, with no order as to costs.

C. V. BHADANG, J.

Ap/