

IN THE HIGH COURT OF BOMBAY AT GOA
MISCELLAENOUS CIVIL APPLICATION NO. 556 OF 2019
IN
STAMP NUMBER MAIN NO.595 OF 2019.

HELEN FERNANDES Applicant

Vs

LEEROUX FERNADES & 2 ORS. Respondents

Ms. S. Kenny, Advocate for the applicant.

Shri T. Gawas, Advocate for the respondents.

Coram:- DAMA SESHADRI NAIDU, J.

Date:- 22nd January 2020

P.C.

A son sued his mother for a perpetual injunction. The mother, in turn, besides filing her written statement, has also maintained a counter claim. Then she has applied under Order 39 Rule 1 of CPC for an ad interim injunction. That relief rejected, she filed a Civil Miscellaneous Appeal before the District Court. But, because of the pecuniary jurisdictional-constraints, the District Court refused to entertain the Miscellaneous Civil Appeal.

2. In this context, the mother pleads that her counsel assured her that he would be filing the appeal before the High Court. Based on that promise, the mother hoped that her counsel must have been diligently pursuing the case. Eventually, she came to know that her counsel has

not filed the appeal before this Court, Then, she secured the NOC and entrusted the matter to another counsel who filed this Appeal from order with a delay of 503 days. To have that delay condoned, the mother also applied under this Misc. Civil Application.

3. To explain the delay, the mother has pleaded that she is a widow, aged 64 years, suffering from a host of geriatric ailments. She has also pleaded that she underwent a knee-replacement surgery and cataract operation. And both those medical emergencies confined her to for many days. That is how the mother explains the delay. She wants the Court to condone the delay and consider the matter on the merits.

4. On the other hand, the son, to begin with, concedes that the Courts do adopt a liberal approach in condoning the delays. But, according to him, there ought to be a reasonable cause for a party to insist on having the delay condoned. Then, the son points out that his mother has failed to show any cause, leave alone sufficient reason, for the delay condonation. To support his contention, the son relies on *Balwant Singh v. Jagdish Singh*.¹

5. Heard Ms. S. Kenny, the learned counsel for the applicant; and Shri T. Gawas, the learned counsel for the respondent.

6. The Supreme Court, true, has reiterated in *Balwant Singh*, after referring to a profusion of precedents, that delay condonation must not

¹ 2010 0 Supreme(SC)557

be for mere asking; it should be supported by cogent reasons. Here, after going through the record, I reckon the mother has supplied sufficient reason: severe ailment, which the son has not seriously disputed; and the confusion the first counsel suffered on pecuniary jurisdiction.

7. Under these circumstances, I reckon the delay ought to be condoned, in the interest of justice. And the only prejudice the son may suffer is that the appeal gets decided on the merits. Here, even in a dispute between the mother and the son, emotion cannot be an adjudicatory element; but justice, coupled with equity and good conscience, amorphous as they are, do play a role.

The delay stands condoned and the application allowed.

DAMA SESHADRI NAIDU, J.