

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 750 OF 2019

SURYAKANT SITARAM CHOPDEKAR., ... Petitioner

Versus

CONCEICAO J. CAMELO GONSALVES AND
ANR., ... Respondents.

Shri T. Gawas, Advocate for the petitioner.
Shri A. D. Bhobe, Advocate for the respondent nos.1 and 2.

Coram:- DAMA SESHADRI NAIDU, J.

Date:- 28th February 2020

P.C.

The respondents in this writ petition were the plaintiffs in Regular Civil Suit No.91/2013/C, before the Civil Judge, Junior Division, Panaji. On the merits, the Trial Court dismissed the suit. Aggrieved, the respondents appealed, but they filed that appeal with a delay of 497 days. To have that delay condoned, the respondents filed an application. The first Appellate Court, through its order dated 1.3.2019, condoned the delay.

2. Then, the petitioner, that is the defendant in the civil suit and respondent in the First Appeal, has filed this Writ Petition, under Article 227 of the Constitution of India.

3. Shri Tanmai Gawas, the petitioner's counsel, has strenuously contended that though both the respondents have cited the reason of illness, their claim of illness is patently false. According to him, the

medical certificates they have produced are unconvincing. Besides, Shri Gawas has drawn my attention to one of the pleas the respondents have taken in their delay condonation application. In that context, he stresses that they have shifted the blame on to their previous counsel, who is said to have not filed the appeal on time. As the judicial precedents mandate, Shri Gawas stresses, the respondents ought to have produced the affidavit of the advocate concerned. Here, that has not happened. Eventually, Shri Gawas has also contended that though the first Appellate Court has referred to the decision he has cited, it has not applied them in the right perspective. So he wants the First Appellate Court's order reversed.

4. On the other hand, Shri Bhobe, learned counsel for the respondents, has submitted that delay condonation is essentially a matter of discretion and that the First Appellate Court has exercised its discretion in a judicious manner. Therefore, it is impermissible for this Court to exercise its supervisory jurisdiction, concludes Shri Bhobe.

5. Heard Shri T. Gawas, the learned counsel for the petitioners; and Shri A. D. Bhobe, the learned counsel for the respondents¹ and 2.

6. True, the respondents, as the appellants, seeking the condonation of delay may have taken various pleas. Two of these being illness of both the respondents and the delay caused by their previous counsel. But the First Appellate Court in its impugned order has

disregarded the second plea and focused on the first one: illness. In para 10 of the order, it has noted that the first respondent is an old lady in her mid-70s with geriatric ailments.

7. On the other hand, the First Appellate Court has also noted that the second respondent had been in and out of the hospital during the relevant period many times and that his illness had led to an operation, besides angioplasty. On these aspects, and supported by medical records, the First Appellate Court has accepted the respondents' plea and condoned the delay.

8. As rightly contended by Shri Bhobe, the respondents' counsel, once a competent Court exercises its discretion, this Court, especially exercising its supervisory jurisdiction, will not interfere. The only exception is when the Court below has exercised that discretion perversely or capriciously, leading to miscarriage of justice. I see here neither. Despite the valiant efforts by the petitioner's counsel, I fail to persuade myself to find any perversity or legal infirmity in the order impugned.

I, therefore, dismiss the petition.

DAMA SESHADRI NAIDU, J.