

IN THE HIGH COURT OF BOMBAY AT GOA

MISC.CIVIL APPLICATION NO. 941 OF 2019

IN

STAMP NUMBER MAIN NO. 2308 OF 2019

STATE OF GOA, THR. GOA POLICE

DEPT., PANAJI.,

... Applicant

Versus

MICHAEL JOAQUIM F. D. SOUZA AND 2

ORS.,

... Respondents

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

Shri Byron Rodrigues, Advocate for the Respondent no.1.

Coram:- NUTAN D. SARDESSAI, J.

Date:- 13th March, 2020

P.C.:

Heard Ms. Susan Linhares, learned Additional
Government Advocate and Shri B. Rodrigues, learned
Advocate for the respondent no.1.

2. It was the contention of Ms. Linhares, learned Additional Government Advocate that on account of administrative hassles and for the reasons set out in the application there was delay in filing the appeal resulting in 405 days delay which ought to be condoned. She placed reliance in Exe. Officer, Antiyur Town Panchayat vs G. Arumugam (D) By Lrs [2015 3 SCC 569] in support of her case. It spelt out 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 the larger public interest, should take a lenient view in such situations, condone the delay of 1373 days in filing the second appeal.

3. Shri B. Rodrigues, learned Advocate for the respondent no.1 opposed the application on the premise that there was unaccounted delay on the part of the applicant and the same ought not to be condoned. He placed reliance in Sayyad Azim Sayyad Mnazur and others v/s. The State of Maharashtra delivered by a learned Single Judge of this Court in Criminal Writ Petition No.667 of 2019 wherein it was observed that the usual reason of "official hassle" or "approval at different levels" is hardly sufficient to justify condonation of delay of about two years and pressed for the dismissal of the application.

4. He further placed reliance in University of Delhi v/s. Union of India and others [Civil Appeal Nos.9488 - 9489 of 2019] wherein the Hon'ble Apex Court had observed at paragraph 20 that by and large, a liberal approach is to be taken in the matter of condonation of delay. The consideration for condonation of delay would not depend on the status of the party namely the Government or the public bodies so as to apply a different yardstick but the ultimate consideration should be to render even handed justice to the parties. Even in such case the condonation of long delay should not be automatic since the accrued right or the adverse consequence to the opposite party is also to be kept in perspective. In that background while considering condonation of delay, the routine explanation would not be enough but it should be in the nature of indicating "sufficient cause" to justify the delay which will depend on the backdrop of each case and will have to be weighed carefully by the Courts based on the fact situation.

5. i have considered the submissions of the learned Advocates and the judgments relied upon supra by the learned Additional Government Advocate and the learned Advocate for the respondent no.1.

6. It is apparent that the delay has occasioned in filing the appeal on account of circumstances beyond the control of the applicant and hence considering the same and in the

interest of justice and to sub-serve the purpose the costs is imposed and the application is allowed.

7. In view thereof, the delay of 405 days is condoned. The Registry to register the appeal. The application is allowed with costs of ₹2000/- (Rupees Two Thousand only) which is a condition precedent to the registration of the appeal.

NUTAN D. SARDESSAI, J.

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