

Andreza

**IN THE HIGH COURT OF BOMBAY AT GOA
SECOND APPEAL NO. 4 OF 2018**

ROSHAN B. NAIK, REP. BY THEIR
ATTORNEY, SIDDESH B. NAIK AND 3 ...APPELLANTS
ORS.,

Versus

THE COMMUNIDADE OF
SANCOALE, THR. ITS ATTORNEY, ...RESPONDENTS
SATISH NARVEKAR.,

**Mr. A. D. Bhobe and Mr. Chirag Angle, Advocates for the
Appellants.**

Mr. H. D. Naik, Advocate for the Respondents.

CORAM: MANISH PITALE, J

DATED: 7th September 2021

ORAL ORDER

1. Heard learned Counsel for the rival parties.
2. The following substantial question of law arises in the present Appeal:

“Whether the Court of District Judge, South Goa, Margao, (Appellate Court) in the present case was justified in holding that the Appellants had failed to show sufficient cause for condonation of delay while rejecting their application for condonation of delay in filing First Appeal.”

3. The learned Counsel for the rival parties were heard at length on the aforesaid substantial question of law.

4. In the present case, the sole Respondent had filed a suit before the Court of Civil Judge, Senior Division at Vasco, at the Trial Court for a Decree for cancellation of certain mutation entries made in favour of the predecessor of the Appellants.

5. The suit was filed in the year 2012 wherein the Appellants were arrayed as Defendants. The Appellants appeared through Counsel before the Trial Court, but the record shows that no written statement was filed on their behalf and the proceedings before the Trial Court continued till the Trial Court passed its Judgment and Decree in the matter. The Trial Court passed its Judgment and Decree on 05.02.2015. The said judgment shows that Counsel represented the Appellants (original defendants) and after hearing arguments on behalf of the rival parties, the Trial Court found that the Respondent (original plaintiff) had made out a case in its favour. Accordingly, the suit was decreed and the name of the late husband of the Appellant no.1 was cancelled from the Record of Rights in respect of the property in question.

6. The Appellants filed First Appeal before the Appellate Court. But, since the Appeal was filed after the period of limitation had expired, it was accompanied by an application for condonation of delay of 389 days in filing the Appeal. In the application for condonation of delay, the Appellants stated that since the Appellant no.1 was in serious trauma due to death of her husband and she was burdened with the responsibility of her three children i.e. the Appellant nos. 2 to 4, she could not keep a

track of the proceedings before the Trial Court. After her elder son returned from Mumbai where he was working, to settle down in Goa and inquiries were made with the Counsel representing the Appellants in the Trial Court, it came to light that the proceedings before the Trial Court had terminated into a decree in favour of the Respondent. On this basis, the Appellants sought condonation of delay and an opportunity to contest the Decree before the Appellate Court.

7. The said application was opposed by the Respondent.

8. By the judgment and order dated 23.11.2016, the Appellate Court dismissed the application for condonation of delay. Consequently, the First Appeal was not registered and the Appellants were denied an opportunity to challenge the Judgment and Decree passed by the Trial Court.

9. The present Second Appeal has been filed by the Appellants challenging the said order of the Appellate Court dismissing their application for condonation of delay.

10. Mr. Bhobe, the learned Counsel appearing for the Appellants, sought to rely on certain judgments to contend that in such facts and circumstances, the Second Appeal before this Court was maintainable. There was no serious objection raised to the said proposition on behalf of the Respondent. This Court is also of the opinion that when the application for condonation of delay stood dismissed, as a consequence, the First Appeal was never registered before the Appellate Court, resulting in implied

rejection of the same, giving an opportunity to the Appellants to file the present Second Appeal.

11. This Court has framed the substantial question of law that arises in the present appeal and it concerns the question as to whether the Appellants had demonstrated sufficient cause to successfully seek condonation of delay in filing the First Appeal before the Appellate Court.

12. The Appellate Court has rejected the contentions raised on behalf of the Appellants on the question of condonation of delay by recording that the principal reason put forth on behalf of the Appellants was not acceptable for the reason that the Appellant no.1 could not claim to be in a state of trauma on the death of her husband as her husband admittedly expired in the year 2005 and the suit itself was filed much later in the year 2012. The Appellate Court also recorded that the Appellants and the original Defendants had participated in the proceedings before the Trial Court and they themselves chose not to file the written statement. In this situation, it could not be said that the Appellants were completely unaware about the proceedings before the Trial Court and that therefore, there was no substance in the contentions raised on their behalf while seeking condonation of delay of 389 days.

13. Mr. Bhobe, the learned Counsel appearing for the Appellants, submitted that the contents of the application for condonation of delay ought to have been appreciated in the correct perspective and that, in his humble submission, the Appellants had been able to demonstrate reasons as to why they

could not approach the First Appellate Court within the period of limitation. It was submitted that if the Appellants were granted an opportunity to have their Appeal considered on merits, it would be in the interest of justice.

14. On the other hand, Mr. Naik, the learned Counsel appearing for the Respondent, invited attention of this Court to the fact that the Appellants themselves had applied for a certified copy of the judgment and decree of the Trial Court, after the period of limitation was over. It was brought to the notice of this Court that Counsel was representing the Appellants throughout before the Trial Court and this was evident from the Judgment and Decree of the Trial Court, wherein it was recorded that the Counsel represented the Appellants before the Trial Court and he also made submissions at the stage of final arguments. The learned Counsel sought to rely upon judgments of this Court to indicate that delay of even 69 days in one matter was not condoned by this Court and that, therefore, the substantial question of law deserves to be answered against the Appellants.

15. This Court has considered the material on record and heard the learned Counsel for the rival parties. There can be no quarrel with the proposition that the question as to whether the party seeking condonation of delay has shown sufficient cause or not depends on the facts and circumstances of each case. In a given case, few days of delay may also not be condoned and, in another case, when the Court is of the opinion that sufficient cause is demonstrated, apparently huge number of days of delay can be condoned. In the present case, there is no dispute about the fact

that the First Appeal filed by the Appellants before the Appellate Court suffered from a delay of about 389 days.

16. The question as to whether the Appellants demonstrated sufficient cause for condonation of delay or not, needs to be appreciated in the backdrop of the application for condonation of delay moved on their behalf. A perusal of the same shows that, according to the Appellants, after the death of the husband of Appellant no.1 on 09.05.2005, she was in a state of trauma, being a widow left to fend for herself and to take care of her children, who are the Appellant nos. 2 to 4 before this Court. It is further stated that although the Appellant no.1 did receive a notice in the context of the said suit pending before the Trial Court, she was unable to take appropriate decisions and pursue the matter as she was burdened with responsibility of three children, who had lost their father and the sole earning member of the family. It is then stated that the Appellant no. 2, being the eldest of three children, had moved to Mumbai and that he was helping Appellant no.1 in taking care of the siblings. It was then stated that the Appellant no.2 decided to leave his employment in Mumbai and to settle down in Goa with the family permanently and to set up his own business. According to the Appellants, when the Appellant no.2 visited the Counsel representing the Appellants before the Trial Court to inquire about the status of the matter after having decided to come back and settle down in Goa, he was informed that the said Judgment and decree had been passed in favour of the Respondent. It is thereafter that the Appellants took steps to prepare an Appeal and file the same before the Appellate Court.

17. This Court is of the opinion that it does not appear to be unnatural on the part of Appellant no.1 to claim that she was in a state of trauma and that she was under pressure of circumstances as a widow left to fend for herself and to look after her children after the death of her husband in the year 2005.

18. Although, the suit was admittedly filed in the year 2012 and Appellant no.1, has fairly stated that she was aware about the pendency of the suit and the Counsel was appearing before the Trial Court, it is not difficult to imagine that in the circumstances in which the Appellant no.1 found herself, she would have found it difficult to pursue the matter in all earnest before the Trial Court.

19. When a question of cancellation of a mutation entry pertaining to her late husband was at stake, the Appellant no.1 and her children had nothing to gain while not being able to pursue the proceeding before the Trial Court. The pleadings in the application for condonation of delay, as to the manner in which the Appellants became aware about the fact that the Trial Court had already passed the judgment and decree, also appears to be natural and it is specifically stated that the moment the Appellants came to know about the said judgment and decree, they immediately approached the Appellate court within three days, although by that time, there was already delay of 389 days.

20. This Court is of the opinion that the Appellate Court has not at all adverted to the contents of paragraphs 9 to 12 of the application for condonation of delay and much stress has been placed on the statement made on behalf of the Appellant no.1

that she was in a state of trauma upon the death of her husband. The Appellate Court has emphasised only on the aspect that when the husband of the Appellant no.1 had died in the year 2005, she was not entitled to put forward that fact as the reason for not pursuing the matter before the Trial Court. The Appellate Court was instead required to consider the reasons put forth on behalf of the Appellants for the delay of 389 days after the judgment and decree was passed by the Trial Court and the alleged recalcitrance on the part of the Appellants before the Trial Court was the only factor which the Appellate Court took into consideration.

21. The Appellants after all had nothing to gain by approaching the Appellate Court after a delay of 389 days. This Court is of the opinion that the contents of the application for condonation of delay ought to have been appreciated in proper perspective and if the Appellate Court had done so, the application would not have been dismissed.

22. In the light of the above, it is found that the Appellate Court erred in dismissing the application for condonation of delay. The substantial question of law framed above is answered in favour of the Appellants.

23. Consequently, the Appeal is allowed. The impugned Order passed by the Appellate Court is set aside. The application for condonation of delay is allowed.

24. Resultantly, the Appellate Court is directed to register the Appeal filed by the Appellants and to consider the same on its own merits.

MANISH PITALE, J.

ANDREZA PEREIRA
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