

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 585 OF 2019

JAYANTI SONU NAIK & 2 ORS. ...PETITIONERS
Versus
1. GANESH @ANIL R. NAIK & ANR. ...RESPONDENTS

Mr. Gaurish Agni, Advocate for the Petitioners.
Mr. Shirin V. Naik, Advocate for the Respondents.

CORAM: MANISH PITALE, J
DATED: 28th September 2021

P.C.

1. By this Writ Petition, the Respondents (original Defendants nos. 4, 5 and 6), have challenged the order dated 20.12.2018 passed by the Court of Adhoc Senior Civil Judge, Vasco, whereby an application for condonation of delay to take written statement on record (Exhibit D-14), was dismissed.

2. The Petitioners had filed their written statement, according to them, after a delay of only one day. When the said written statement was filed, the learned Adhoc Senior Civil Judge passed the following order on the written statement :

*“The w.s. is beyond time limit of 90 days &
no Application supporting condonation of
delay & same is also not explained as the
Defendants were served on 19.06.18 & today
is 92nd day. hence w.s. not considered.
-sd/- 18/9/18
ASCJ 'B' Court, Vasco”*

3. Since it appeared to be an order refusing to take written statement on record, an application was preferred on behalf of the Petitioners for grant of certified copies of the said order. On the said application, a submission was made by the office of the aforesaid Court stating that there was no order passed in the suit on 18.09.2018. As a consequence, the Court passed an order on the said application directing that certified copy need not be issued in view of the submission of the office and the amount be refunded.

4. In this backdrop, the Petitioners filed the aforesaid application at exhibit D-14 seeking condonation of delay for filing written statement. In the said application, it was explained as to the reasons for the minor delay in filing the written statement. It appears that in the said application, the Petitioners also stated that they were seeking review of the order dated 18.09.2018, whereby the written statement was not taken on record of the file. The main prayer in the said application was for condonation of delay and taking the written statement on the record of the file.

5. The impugned order starts with an observation that the said order would dispose of the application for condonation of delay filed on behalf of the Petitioners. It is pointed out by the learned Counsel appearing for the Petitioners that thereafter the Court appears to have proceeded only on the basis that the application was for review of the order dated 18.09.2018 and the application has been rejected only on that ground. It is observed in the impugned order that no ground for review as contemplated in the Civil Procedure Code is made out and, therefore, the

application deserves to be dismissed. Yet, surprisingly the operative part of the order records that condonation of delay in taking the written statement on record stands dismissed.

6. The learned Counsel appearing for the Respondents submitted that the Court below passed the impugned order for the reason that in their application itself, the Petitioners had stated in paragraph 8, that by way of abundant caution, they were seeking review of the order dated 18.09.2018.

7. Be that as it may, it is distressing that the Court below wasted its own time and that of this Court for such a minor question as to condonation of delay of one day as claimed by the Petitioners or at the most two days as per the record of the Court below in filing the written statement. It is settled law that the time limit specified in the relevant provisions in the Civil Procedure Code for filing written statement is directory and not mandatory and further that in appropriate cases, the Court ought to condone the delay so that the pleadings are complete and the dispute between the parties can be decided on merits.

8. In the present case, the Petitioners had placed on record sufficient reasons while seeking condonation of delay in filing the written statement. The reasons have not been taken into consideration by the Court below at all and it has completely misdirected itself on proceeding on the basis that a review application was being considered. It is evident that in the impugned order in the opening and the last portion of the order there is reference to the application for condonation of delay, but the body of the order concentrates only on the aspect of review.

Therefore, the impugned order is found to be wholly unsustainable.

9. In view of the above, the Writ Petition is allowed. The impugned order is quashed and set aside. The application at Exhibit D-14 for condonation of delay in filing the written statement filed by the Petitioners is allowed in terms of the prayers made therein.

10. Consequently, the written statement already on the record of the Court below, shall be taken on the file and the Court shall proceed expeditiously with the matter.

11. Writ Petition stands disposed of.

MANISH PITALE, J.

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