

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
APPEAL FROM ORDER NO.13 OF 2021

ROHIDAS T. NAIK,
son of Tatu Naik,
60 years age, Indian,
House No.528, Dongri,
Neura, Tiswadi, Goa.

..... Appellant.

Versus

1. STATE OF GOA,
Through the Chief Secretary,
Porvorim, Bardez Goa.

2. MAMLATDAR OF TISWADI
Collectorate Building,
Panaji Goa.

3. OFLA AND DONGZA
TENANTS ASSOCIATION
through its Chairman,
Govind V. Naik,
having their office at Mandur,
Carambolim, Tiswadi, Goa.

..... Respondent.

Mr. Raunaq Rao, *Advocate for the Appellant.*

Mr. S.P. Munj, *Addl. Govt. Advocate for Respondents No.1 and 2.*

Mr. A.D. Bhobe, *Advocate for Respondent No.3.*

Correction carried
out as per order dtd.
5/8/2021 in MCA
No.1647/2021 (f).

Coram : M.S. Sonak, J.

Dated : 20th ~~June~~ ^{July}, 2021.

ORAL JUDGMENT :-

Heard Mr. Raunak Rao for the Petitioner, Mr. Prashil

Arolkar, learned Additional Govt. Advocate for Respondents No.1 and 2 and Mr. A.D. Bhobe for Respondent No.3.

2. Admit. With the consent of and at the request of the learned Counsel for the parties, the Appeal is disposed of finally at this stage itself.

3. The challenge in this Appeal is to the impugned orders dated 22/1/2018 and 15/3/2019 made by the District Court, Panaji, dismissing the Appellant's Suit for non-prosecution and, thereafter, refusing to condone the delay of 148 days and setting aside the dismissal and restoring the Suit to its file.

4. In the application seeking condonation of delay of 148 days, the Appellant explained the circumstances in which he was unable to remain present in the Court and pursue the Suit. The Appellant has basically blamed his Advocate. Although, it is true as contended by Mr. Bhobe that several opportunities were granted to the Appellant, the Appellant has not pursued the suit with required diligence. In such circumstances, it has become some fashion to blame the Advocate. It is also the duty of the Appellant to have pursued the matter with his Advocate rather than to simply blame the Advocate.

5. Be that as it may, the consequences of the dismissal of the

Suit are bound to be harsh on the Appellant. The Appellant has pointed out that pursuant to the dismissal of the Suit, the Appellant has been called upon to pay a sum of ₹ 28.20 lakhs, together with interest at the rate of 8.25 % from 10/4/2018, till the date of actual payment.

6. Undoubtedly, in this case, there is a lapse on the part of the Appellant. However, the lapse is not malafide or sufficient to completely non-suit the Appellant. Having regard to the law laid down by the Hon'ble Apex Court in *N. Balakrishnan vs. M. Krishnamurthy*¹, and *Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy & Ors.*² the delay is liable to be condoned and even the order dismissing the Suit for non-prosecution set aside. All this, of course, shall be subject to the Appellant paying substantial costs. This is because the Hon'ble Apex Court has said that ultimately, the opposite party must not be forgotten and must be suitably compensated.

7. Accordingly, this Appeal is disposed of by making the following order :

- (a) The impugned orders dated 22/1/2018 and 15/3/2019 are, hereby, set aside and the Civil Suit No.23/2014 is restored to the file of District Judge -1, at Panaji;
- (b) The aforesaid is subject to the Appellant paying costs of

¹ (1998) 7 SCC 123

² (213) 12 SCC 649

₹ 25,000/- in favour of Respondent No.3 and ₹ 25,000/- in favour of the Goa State Covid -19 Relief Fund. Such costs/payment will have to be made within a maximum period of 4 weeks from today and necessary proof of payment will have to be filed before the Trial Court.

(c) If there is no payment within the period prescribed, then, this Appeal shall be deemed to have been dismissed with costs of ₹ 25,000/-, payable in favour of Respondent No.3.

8. Parties to now appear before the District Judge-1, Panaji on 23/8/2021 at 10.30 a.m. and file an authenticated copy of this order. If, by that date, the costs are paid, the learned District Judge to proceed with the Suit, which shall stand restored to his file.

9. The learned District Judge is directed to dispose of the Suit, which was instituted in the year 2014, as expeditiously as possible and, in any case, within a period of 8 months from today. The learned Counsel for the Appellant states that the Appellant will cooperate in expeditious disposal of this Suit.

10. The Appeal is allowed in the aforesaid terms.

11. All concerned to act based on an authenticated copy of this order.