

Aura

IN THE HIGH COURT OF BOMBAY AT GOA

Writ Petition No. 127 of 2017

1. Shri Anand Fulu Gayek alias Anand Filu Gaec, s/o later Fulu Gayek, age 52 years, agriculturist.
2. Shri Ajit Anand Gayek alias Ajit Ananda Gaec, S/o Shri Ananda Gaec, aged 25 years, service,
3. Shri Amol Anand Gayek alias Amol Ananda Gaec, s/o Shri Anand Gayek, age 23 years, service, all Indian National, residing at House No. 53, Mastimol, Xeller, Canacona, Goa.

Petitioners

Versus

1. Shri Malikkarjuna Devasthan Shristal, Thr its Administrator, Shruishtal, Canacona, Goa.
2. Shri Shiva Vassuev Deshmuk, s/o Vassudev Deshmuk, age 24 years, service, Indian National, residing at Khalvadem, Canacona, Goa.

Respondents

Mr. Rohan R. Dessai, Advocate for the Petitioner
Mr. Parag G. Wagle, Advocate for the Respondents.

CORAM: MANISH PITALE, J
DATED: 14th September, 2021

ORAL JUDGMENT :

1. By this Writ Petition, the petitioners have challenged order dated 13/4/2016 passed by the District Court, South Goa, Margao, whereby an application for condonation of delay in filing an application for restoration of a Revision application has been dismissed on the ground that the petitioners failed to demonstrate sufficient cause for condonation of delay.

2. In the present case, the petitioners raised the issue of tenancy and sought a declaration to that effect under the provisions of Goa, Daman and Diu Agricultural Tenancy Act, 1964, before the competent authority i.e. the Mamlatdar. After considering the contentions raised by the petitioners and the contesting respondents, the Mamlatdar rejected the application of the petitioners. Aggrieved by the same, the petitioners filed an appeal before the Deputy Collector. The said appeal was dismissed, against which the petitioners filed Revision application before the Administrative Tribunal at Panaji, Goa. The tenancy revision application was taken up for hearing on 25/9/2013. On the said date, an application was filed by the advocate representing the petitioners, stating that the petitioners were not desirous of pursuing the matter and that there were instructions to withdraw the revision application. The Tribunal took up the

application for consideration and on 25/9/2013 granted the same and dismissed the revision application as withdrawn.

3. The petitioners claim that they were not aware of such developments and they had never instructed the advocate to move an application to withdraw the revision application. According to them, they became aware about the status of the case after three months when their advocate contacted them and informed that the case was over. According to the petitioners, it was only in January 2014 that they visited the office of another advocate and, thereafter, took follow up steps to eventually file the application for restoration of the revision application, along with an application for condonation of delay on 11/8/2014. In the application for condonation of delay, the petitioners stated the sequence of events leading to the filing of the application for restoration of revision and the application for condonation of delay. According to them, they had demonstrated sufficient case for condoning the delay.

4. By the impugned order dated 13/4/2016, the said Court considered the contentions raised on behalf of the petitioners and found that no sufficient cause was demonstrated and accordingly dismissed the application with costs of Rs.200/- .

5. Aggrieved by the same, the petitioners approached this Court and on 29/3/2017 Rule was granted in the present Writ Petition.

6. Mr. Rohan Desai, the learned counsel appearing for the petitioners invited the attention of this Court to the application for condonation of delay and submitted that sufficient details were stated in the application to demonstrate cause for the delay in filing the application for restoration. It was submitted that the petitioners were dependent on their advocate and they were totally unaware about the withdrawal of the revision application. It was brought to the notice of this Court that a complaint under section 35 of the Advocates Act was filed against the said Advocate who was representing them before the Tribunal and who had withdrawn the revision without any instructions. It was submitted that the petitioner no.1 was not aware about the niceties of law and he depended upon the advocate subsequently engaged for taking remedial action in the matter. It is submitted that in these circumstances, delay of 319 days had occurred. The learned counsel submitted that the litigant ought not to be punished for the deficiencies on the part of the advocate representing the litigant. Reliance was placed on the Judgment of this Court in the case of *Rafiq and another Vs. Munshilal and another* 1981 2 SCC 788 and (2) *Perumon Bhagvaty*

Devasworn, Perinadu Village Vs. Bhargavi Amma (dead) by
Lrs and others- 2008 (8) SCC 321.

7. On the other hand, Mr. P. Wagle, the learned counsel appearing for the respondents submitted that a perusal of the impugned order would show that all the contentions sought to be raised on behalf of the petitioners before this Court were considered in detail by the Court below and it was found that the certified copies were ready as far back as on 4/3/2014, which the petitioner no.1 himself collected after a month on 9/4/2014 and yet the application for restoration of the revision application was filed much later on 11/8/2014. There was no semblance of any explanation for the delay from March 2014 to August 2014 and on this basis, it was submitted that the approach adopted by the Court below was justified and that the delay in approaching the Court for restoration did not deserve to be condoned.

8. Having heard the learned counsel for the parties, this Court has perused the application for condonation of delay filed on behalf of the petitioners. In paragraph 2 of the said application, the petitioners have stated chronologically the events that occurred from the date of dismissal of the revision application as withdrawn on 25/9/2013, till filing of the application for restoration in August 2014. It is stated in the said paragraph that

the certified copies were collected by the petitioners on 9/4/2014. Thereafter, the petitioners contacted their advocate, who advised them to file a complaint against the earlier advocate, who was representing them in the revision application and in that context, the petitioners were called to the office of the advocate in June 2014. The complaint against the erstwhile advocate was drafted and kept ready in June 2014 and eventually in July 2014, it was sent to the Bar Council of Maharashtra and Goa. It is specifically stated that the complaint was received in the office of the Bar Council of Maharashtra and Goa on 28/7/2014 and, thereafter the application for restoration of the revision application was filed in August 2014.

9. There is no dispute about the fact that the application suffers from delay of 319 days. But the only question is, whether the petitioners can be said to have demonstrated sufficient cause for condonation of delay. Perusal of the impugned order shows that after appreciating the dates and events stated by the petitioners in their application for condonation of delay, the Court below emphasized on the fact that even till June 2014 the petitioners appeared more interested in proceeding against their erstwhile advocate and that nothing prevented them from filing the application for restoration of the revision application, despite having collected the certified copies on 9/4/2014 itself. It is noted

in the impugned order that while the petitioners blamed their erstwhile advocate, they did not mention the name of the advocate and affidavit of the advocate was not filed in support of the application. This Court is unable to appreciate the course adopted by the Court below, inter alia, for the reason, that in the present case the petitioners are agitating their grievance pertaining to agricultural tenancy and it is a reasonable contention made on behalf of the petitioners that they were not aware about the niceties of law and that they naturally depended on the advice of their advocate to proceed in the matter.

10. In the first instance, the advocate representing the petitioners in the revision application appears to have filed an application seeking withdrawal of the revision application, even when the petitioners claimed that they had not given any such instructions. If that be so, it is evident that the petitioners could not be blamed for not having immediately moved for restoration of the revision application, while it was withdrawn on 25/9/2013. A perusal of the record shows that the affidavit of the petitioner no.1 filed in support of the application for condonation of delay shows that the contents of the application had to be read and explained in Konkani to the petitioner no.1. It would be reasonable to conclude that the petitioner no.1 would necessarily depend upon the advocate for advice and action to be taken in

respect of restoring the revision application, which according to the petitioners stood withdrawn without instructions.

11. The Court below is not justified in emphasising on the aspect that the petitioners appeared to be more interested in proceeding against their erstwhile advocate, because if the claim of the petitioners that the revision application was withdrawn without instructions, is correct, it is certainly a disturbing factor and the petitioners would be justified in seeking to take whatever action possible against such an advocate. Even for taking such action, the petitioners relied upon advice of the advocate subsequently engaged. If the circumstances in which the restoration application was eventually filed are to be appreciated in the correct perspective, it would be evident that the Court below took a rather harsh approach while rejecting the application for condonation of delay.

12. The observation that the petitioners did not even name their erstwhile advocate is inconsequential and irrelevant to the issue that the Court below was expected to decide. The contents of the application for condonation of delay do show the steps taken by the petitioner in engaging another advocate and then acting on the basis of the advice given by the said advocate. In this context the judgment of the Hon'ble Supreme Court in the

case of *Rafiq and another Vs. Munshilal and another (supra)* is relevant. The Hon'ble Supreme Court has taken judicial notice of the fact that the litigants in rural areas are unaware about details of procedure and after engaging an advocate, they are confident that their interests would be taken care of. It has also been held that a party ought not to suffer due to inaction, deliberate omission or misdemeanour of the advocate and the interest of the case should be decided on merits.

13. Similarly, in the case of *Perumon Bhagvathy Devaswom, Perinadu Village Vs. Bhargavi Amma (supra)* after taking into consideration the earlier judgments on this aspect, the Hon'ble Supreme Court has recognised certain principles while considering the aspect of condonation of delay. It is observed that the Courts view applications for condonation of delay in the context of lawyers lapses more leniently than applications relating to litigants' lapses. Following such position of law and applying the same to the facts of the present case, this Court is of the opinion that the impugned order is unsustainable and that the writ petition deserves to be allowed.

14. Another significant aspect of the present case is that a perusal of the application for restoration of the revision application would show that the reasons stated therein are similar

or identical to the reasons stated on behalf of the petitioners while seeking condonation of delay in filing the application for restoration. Apart from this, it is stated on behalf of the petitioners that they had never instructed their advocate to withdraw the revision application and that the application filed on their behalf was withdrawn without instructions. It is also relevant that the petitioners have proceeded against the said advocate by filing complaint against him before the State Bar Council and this is a significant factor for considering the prayer for restoration of the revision application. If the Writ petition is allowed and only the application for condonation of delay is allowed, the matter would go back to the concerned Court for considering the application for restoration of the revision application. As the reasons assigned in the said application are same, as were assigned by the applicant when seeking condonation of delay, it would be a futile exercise to ask the Court below to consider only the application for restoration of the revision application, particularly in the light of the fact that this Court is inclined to accept the reasons put forth on behalf of the petitioner.

15. In view of the above, while exercising writ jurisdiction of this court, it would be in the interest of justice not only to set aside the impugned order and allow the application for

condonation of delay, but the application for restoration of the revision application also deserves to be allowed, so that the Tribunal or the concerned Court can consider the revision application on merits and decide the same.

16. It is settled law that endeavour of the Court ought to be to decide lis between the parties on merits rather than on hyper-technicalities. It would be in the interest of justice that the dispute in the present case is put to rest on merits rather than on hyper-technicalities.

17. In view of the above the Writ petition is allowed. The impugned order is quashed and set aside. The application for condonation of delay filed on behalf of the petitioners as well as the application seeking restoration of the revision application stand allowed. Accordingly, the revision application is restored.

18. The learned counsel for the respondents submits that as per the information available with him the Administrative tribunal Panaji-Goa is presently unable to function because there is no Presiding Officer due to the retirement of the officer who was holding that post. It is also informed that in such a contingency, the revision application would have to be considered by the competent Court.

19. In view of the above, the Revision application is restored and the competent Court is directed to consider the revision application on merits and to dispose of the same expeditiously. The said Court shall take up the application and make an endeavour to dispose of the same within a period of three months from today. Rule made absolute in above terms.

20. Needless to say, the said Court shall not be influenced by observations made in the present order as they are limited only to the question of condonation of delay and restoration.

MANISH PITALE, J.