

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPLICATION (MAIN) NO. 312 OF 2019

Mr. Grenville Domnick Jeus Dias,

..... Applicant

V e r s u s

1. Mrs. Maria Do Ceu Nandita Fernandes & Ors.;Respondent

Mr. Kaif Noorani, Advocate U/LAS for the Applicant.

Mr. Ryan Menezes and Nigel Fernandes, Advocates for the Respondent.

CORAM : M. S. JAWALKAR, J.

DATE : 25th January, 2021

ORAL ORDER.

Heard learned Counsel Mr. Kaif Noorani, Advocate appointed Under Legal Aid Scheme for the applicant and Mr. Ryan Menezes, learned Counsel for the respondents.

2. The present application is filed challenging the order dated 17.09.2019, passed by the learned Additional Sessions Judge, Panaji, in Criminal Misc. Application no. 98 of 2018, whereby the learned Judge was

pleased to dismiss the application filed by the petitioner under section 5 of the Limitation Act 1963, seeking condonation of delay of 69 days to file revision against the order dated 29.01.2018 passed by learned JMFC., Panaji, in Maintenance Application no. 1 of 2015/D.

3. It is submitted by learned Counsel for the respondent that application for certified copy which is sine qua non for filing revision itself is obtained in the month of July 2018, whereas the order in Maintenance application no. 1 of 2015 was passed on 29.01.2018. As such application for certified copy itself is filed beyond limitation. Moreover, there is no proper explanation in the application for condonation of delay. There is nothing mentioned when the draft was prepared and approved. In view thereof, order passed by the learned Additional Sessions Judge, Panaji, is justified.

4. I have perused the application for condonation of delay before the learned Additional Sessions Judge. It appears that after passing of the order, the applicant applied for legal aid before North Goa, District Legal Service Authority in first week of February, 2018. The said application was allowed

on 06.02.2018 and Advocate Ms. Priyanka Kamat was appointed as legal aid Counsel for the applicant. Thereafter, in the first week of March 2018, applicant submitted all the relevant documents as required by Advocate Ms. Kamat in order to draft the revision. Thereafter, draft was handed over to applicant for his approval. It appears that after approval, revision along with application for condonation of delay was filed on 05.07.2018. The learned Additional Sessions Judge dismissed the application for condonation of delay mainly on the ground that there is no explanation as to when legal aid Counsel was appointed on 06.02.2018 and why he approached his legal aid Counsel in the second week of February. There is no explanation for submitting documents in the first week of March, 2018. It is also observed that applicant has not stated that when revision petition was drafted by his Advocate and given to him for approval. As such, it is held that there is no sufficient cause to condone the delay.

5. In my considered opinion, this is hyper technical approach and it is not expected from the applicant that he should give day to day account in his application. It is not the case that he was not diligent. Applicant allotted

for legal aid Counsel in the first week of February. He approached second week of February to his Counsel. True it is applicant applied for certified copy in the month of July, however, it is not the case that he was not diligent to pursue his matter.

6. In the case of **Collector, Land Acquisition, Anantnag & anr. vs. Mst. Katiji & Ors. (1987) 2 SCC 107**, it is well settled principle of law that the matter should not be thrown at the threshold of such technicalities without hearing on merit. There appears no intentional delay caused in filing revision application and, hence, the delay needs to be condoned. The applicant may be imposed with certain condition while condoning the delay so that interest of other party can be secured to some extent. Hence, I am inclined to allow the application.

7. Accordingly, I pass the following :

ORDER

- (i) The application is allowed.
- (ii) The order dated 17.09.2019 passed by learned Additional Sessions Judge, Panaji, in Criminal Misc.

Application No.98 of 2014 is hereby quashed and set aside.

(iii) The delay in filing revision before the Additional Sessions Judge is hereby condoned subject to condition precedent that applicant shall deposit amount of Rs.50,000/- before the learned Additional Sessions Judge within a period of two months.

(iv) The learned Additional Sessions Judge shall register the revision application after compliance of the said condition.

(v) The application is disposed off accordingly.

(vi) No order as to costs.

M. S. JAWALKAR, J.

ANDREZA
PEREIRA

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