

Esha

IN THE HIGH COURT OF BOMBAY AT GOA

MISC. CIVIL APPLICATION NO. 92 OF 2022

IN

STAMP NO. 2349 OF 2018 (F)

WITH

STAMP NO. 2349 OF 2018 (F)

WITH

STAMP NO. 2350 OF 2018 (F)

PONDA MUNICIPAL COUNCIL, THR.

ITS CHIEF OFFICER, PONDA

... APPLICANT

VS

USHA SHANBHAG AND ANR

... RESPONDENTS

Mr. Pranav Vaze, Advocate for the Applicant.

Mr. Shivraj Gaonkar, Advocate for Respondent No. 1.

Mr. Geetesh Shetye, Additional Government Advocate for
Respondent No. 2.

CORAM: G.S. KULKARNI, J.

DATED: 12 OCTOBER 2022

ORAL ORDER.

1. This is an application for condonation of delay of 267 days in filing a First Appeal. The First Appeal as filed, is against a judgment and order dated 19 July 2017 passed by the learned District Judge-2, Panaji sitting at Ponda in Land Acquisition Case No. 25/2015.

2. It is seen from the application that the impugned judgment and order was passed by the learned District Judge on 19 July 2017. An application for obtaining certified copy was made on 19 July 2017 i.e. on the same day. On 28 July 2017, the certified copy of the impugned judgment and order was kept ready, however, the same was collected on 31 July 2017.

3. The reasons as set out in the memo of the application praying for condonation of delay is that the applicant was under impression that 50% of the awarded amount is required to be deposited in this Court as a condition precedent for filing of the First Appeal. It is contended that the applicant was having financial constraints on account of large overdues from the market collections and very limited expenditure being sanctioned for legal matters. It is contended that the applicant had huge legal expenditure in other land acquisition proceedings amounting to Rs.14 lakhs and Rs.3,92,500/- respectively. It is hence contended that the applicant was not in a position to make any provision for the amounts due to such financial constraints and budgetary provision as already made. It is next contended that the budgetary provision could be made only in the ensuring March budget to be prepared for the financial year 2018-19 and the financial approval could thereafter be accorded for the proceedings to be

filed. It is contended that the applicant had accordingly made financial provisions for the deposit to be made in this Court by moving a prayer for stay of the impugned judgment and order and other ancillary proceedings. It is contended that the budgetary approval was received on 13 April 2018 from the Accounts Department vide letter dated 11 April 2018.

4. The next contention of the applicant is to the effect that, the applicant was faced with the municipal elections. A code of conduct for such elections became applicable qua the applicant-Council on 6 April 2018 and the same was in force till the elections of the Chairperson were completed, which happened in the last week of May 2018, therefore, no steps could be taken to file an Appeal. It is next contended that upon re-opening of the Courts after the intervening summer vacations, the applicant furnished the aforesaid material before their Advocate with a request to lodge the Appeal, and accordingly, the Appeal was drafted and finalized, and filed in this Court. It is in these circumstances, it is contended that the delay be condoned.

5. A reply affidavit on behalf of respondent no. 1 opposing the delay condonation has been placed on record. Respondent no. 1 has contended that the contention of financial constraints as urged by the applicant is an untenable contention. It is submitted that no

details whatsoever of financial position/accounts etc. have been submitted by the applicant so that the Court can believe such contentions raised on behalf of the applicant. It is next contended that the declaration of the election, in any manner, could not be an impediment to file an Appeal. It is accordingly submitted that the application be dismissed as none of the grounds for condonation of delay as urged falls under Section 5 of the Limitation Act. Learned Counsel for respondent no. 1 in supporting his submission has placed reliance on the decision of this Court in **The Executive Engineer, Krishna Marathwada Construction Division No. 1 Osmanabad M.R. Vs. Chandrabhagabai R. Patil & Another¹**, whereby, in a similar situation, the Court considering the decision of the Supreme Court in **G. Ramegowda, Major etc. Vs. Special Land Acquisition Officer, Bangalore²**, wherein, the Supreme Court interpreting Section 5 of the Limitation Act, 1963, observed that law of limitation would be applicable similarly to the private citizens as also to the Governmental authorities and that the Government like any other litigant must take responsibility for the acts or omissions of its officers. The learned Single Judge has also taken into consideration the decisions of the Supreme Court in **Registrar of Companies Vs. Rajshree Sugar and Chemicals Ltd. &**

¹ Order dated 27.08.2018 in CA No. 6509/2017

² 1988 SCC (2) 142

Others³; Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Afar Academy & Others⁴; Postmaster General & Others Vs. Living Media India Limited & Another⁵; Basawaraj & Another Vs. Special Land Acquisition Officer⁶; Pundalik Jalam Patil (D) by LRs. Vs. Executive Engineer, Jalgaon, Medium Project & Another⁷ and the decision of the Division Bench of this Court in State of Maharashtra & Others Vs. Vithu Kalya Govari & Others⁸ to observe that the provisions of Law of Limitation should not be for the benefit of few and held that in the facts of such case, there was no reason for causing such inordinate delay in filing the Appeal in question.

6. The principles of law as laid down in the above decisions necessarily would apply to the proceedings in hand. In my opinion, it can be seen from the averments as set out in the memo of the application that none of the reasons as stated by the applicant, praying that such long delay in filing the Appeal be condoned, can be accepted to be any justification whatsoever for this Court to take a view different from what the settled position in law, in this regard would mandate the Court to adopt.

³ (2000) 6 SCC 133

⁴ (2013) 12 SCC 649

⁵ (2012) 3 SCC 563

⁶ (2013) 14 SCC 81

⁷ (2008) 17 SCC 448

⁸ 2008(6) Mh.L.J. 239

7. The grounds as taken by the applicant either of financial constraints, or of an election code of conduct, cannot be said to be any justifiable reason or a sufficient cause for this Court to deviate from the principles of law as discussed above. Moreover, insofar as financial constraints are concerned, such reason, on the face of it is totally untenable and cannot be accepted so as to not fall within the parameters of “sufficient cause” for condoning the delay. In my opinion, if such reasons are accepted then, a situation is brought about that different parameters are required to be applied in applying law, for litigants like the applicant, which has been deprecated by the Supreme Court interpreting Section 5 of the Limitation Act, 1963.

8. Accordingly, the present application is held to be misconceived. It is hence dismissed. No costs.

9. Consequently, the Appeal under Stamp No. 2349/2018 would not survive and is accordingly disposed of. Nothing would survive in Stamp No. 2350/2018 and the same stands disposed of.

G.S. KULKARNI, J.