

Niti

IN THE HIGH COURT OF BOMBAY AT GOA
MISC. CIVIL APPLICATION NO.1015 & 1016 OF 2018
IN
FIRST APPEAL NO.130 OF 2012

KRISHNA GOVIND NAIK
(EXPIRED) THROUGH HIS
LRS. AND 3 ORS. ...APPLICANTS

Versus

GOVIND RAMCHANDRA
NAIK (EXPIRED) THROUGH
HIS LRS. AND 3 ORS. ...RESPONDENTS

Mr. Joaquim Godinho, Advocate for the Applicants.
Ms. Pooja Naik, Advocate for Respondent Nos.1(a), 1(b), 1(l), 1(m),
2, 3(d) & 4(a).

CORAM: M. S. SONAK, J.

DATED: 1st APRIL 2022

P.C. :

1. Heard Mr. J. Godinho, learned Counsel for the applicant and Ms. Pooja Naik, learned Counsel for the respondent nos.1(a), 1(b), 1(l), 1(m), 2, 3(d) & 4(a).
2. Mr. Godinho states that all the respondents have been duly served including by way of publication.
3. These are applications for condonation of delay and to bring on record the legal representatives of respondent no.1(a),

who died on 08.06.2013, respondent no.1(b), who died on 02.07.2016, respondent no.1(l), who died on 11.09.2015 and respondent no.1(m), who died on 28.10.2014.

4. There is considerable delay and the explanation is that the applicants were pursuing this matter, but had no knowledge about the death of these respondents. Mr. Godinho points out that when the matter came up for hearing the advocate for the respondents submitted that some of the respondents have expired. Thereafter inquiries were made and this application was filed.

5. Mr. Godinho submits that though the delay is substantial, there are no malafides involved and the applicant has not gained any advantage on account of this delay. He submits that a liberal approach be adopted and the delay be condoned.

6. Ms. Pooja Naik, learned Counsel for the respondents, opposes the condonation of delay by pointing out that there are no details as to how the applicant came to know about the death. She points out that even if we were to go by the date of the death as reflected in the death certificates, the delay is 869 days and 1482 days and not 780 days and 1074 days as pleaded in the application. She, therefore, submits that no sufficient cause is shown and this application ought to be dismissed.

7. Upon considering the rival contentions and on perusing the material on record, I think that the sufficient cause has been shown and the delay ought to be condoned. This is not a case where the applicants have derived any undue advantage by delaying the bringing on record of the legal representatives of the

deceased respondents. The statement that the applicants came to know about this death only when the advocate for the respondents made some statement to this effect deserves acceptance in the facts of the present case. Though it is true that the delay may be in excess of what has been set out in the application, the cause shown is sufficient to explain even this portion of the delay. However, the applicants will have to pay costs to the parties now represented by Ms. Pooja Naik because these parties have taken the trouble of engaging the advocate to oppose the condonation of delay.

8. Accordingly, this application is allowed. The delay in bringing legal representatives of deceased respondent nos.1(a), 1(b), 1(l) and 1(m) is hereby condoned and the legal representatives of the said respondents are permitted to be brought on record.

9. The application is allowed subject to payment of costs of ₹3,000/-. Mr. Godinho states that such costs will be directly paid to Ms. Pooja Naik within three weeks from today and necessary receipt will be placed on record.

10. The application is disposed of in the aforesaid terms.

M. S. SONAK, J.