

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA
MISC. CIVIL APPLICATION NO. 1039 OF 2019
IN
FIRST APPEAL NO. 75 OF 2010

Nilu Naik	<i>Versus</i>	... Applicant
Gajanan Satish Naik & 6 Ors.		... Respondents

Mr. Kevin Braganza, Advocate *for the Applicant.*

Mr. Ryan Menezes, Advocate *for the Respondent nos. 1 to 4.*

Ms. Susan Linhares, Additional Government Advocate
for Respondent no.7.

CORAM: M. S. SONAK, J
DATED: 14th December, 2023

P.C.

1. Heard Mr Braganza, learned Counsel for the Applicant, Mr Ryan Menezes, learned Counsel for the Respondent nos. 1 to 4 and Ms. Linhares, learned Additional Government Advocate for Respondent No. 7.
2. This is an application for setting aside abatement and bringing on record the legal representatives of the deceased applicants.
3. The application is made beyond the prescribed period of limitation. The Applicant states that the Advocate for the Applicant

was unaware of the demise of the Appellants and, therefore, the application could not be moved within the prescribed period.

4. Mr. Ryan Menezes, learned Counsel, pointed out that Appellants were parties in a different suit before the Trial Court. He submits that other legal representatives were brought on record. He therefore submits that a false statement has been made in the application and the abatement therefore should not be set aside.

5. Even going by Mr Menezes's submissions, the application to bring on record the legal representatives of the deceased Appellants, was made in a different suit. This does not mean that the Advocate appearing in this Appeal was aware of the demise of the Appellants.

6. In such matters, it is not the length of the delay but the quality of the explanation that is relevant. Besides, in the case of ***Perumon Bhagvathy Devaswom, Perinadu Village vs. Bhargavi Amma (Dead) by Lrs & Ors.***¹ the Hon'ble Supreme Court has explained that the word '*sufficient cause*' for not making the application within the period of limitation, should be understood and applied in a reasonable, pragmatic, practical and liberal manner, depending upon the facts and circumstances of the case and the type of case. The Hon'ble Supreme Court has held that the words

¹ (2008) 8 SCC 321

‘sufficient cause’ in Section 5 of the Limitation Act should receive a liberal construction to advance substantial justice when the delay is not on account of any dilatory tactics, want of bonafide, deliberate inaction or negligence on the part of the appellant.

7. The Court has further held that the extent or degree of leniency to be shown by a Court depends on the nature of the application and the facts and circumstances of the case. *For example, Courts view delays in making applications in a pending appeal more leniently than delays in the institution of an appeal. The Courts view applications relating to lawyers' lapses more leniently than applications relating to litigant's lapses.* The classic example is the difference in approach of Courts to applications for condonation of delay in filing an appeal and applications for condonation of delay in refiling the appeal after rectification of defects.

8. The Court has further held that want of ‘diligence’ or ‘inaction’ can be attributed to an appellant only when something required to be done by him is not done. When nothing is required to be done, Courts do not expect the appellant to be diligent. Where the High Court admits an appeal and is not expected to be listed for final hearing for a few years, an appellant is not expected to visit the Court or his Lawyer every few weeks to ascertain the position nor keep checking whether the contesting respondent is alive. He merely

awaits the call or information from his Counsel about the listing of the appeal.

9. Considering the law laid down by the Hon'ble Supreme Court in ***Perumon Bhagvathy Devaswom, Perinadu Village vs. Bhargavi Amma (Dead) by Lrs & Ors.*** (supra) and applying the same in the facts of the present case, the delay in applying for setting aside the abatement is required to be condoned and is hereby condoned. The abatement is set aside, and leave is granted to bring on record the legal representatives of the Appellants.

10. Mr. Menezes pointed out that the fact that this appeal has abated, was pointed out in the suit before the Trial Court. Again, as noted earlier, it is not even Mr Menezes's case that the Advocate appearing before the High Court for the Appellants was also the Advocate appearing on behalf of the Appellants before the Trial Court in the suit. Therefore, based on these submissions, there is no case made out not to condone the delay or set aside the abatement.

11. Mr Braganza states that the necessary amendment will be carried out within four weeks from today. He also states that even Wakalatnama on behalf of the legal representatives will be filed within the said period.

12. Misc. Civil Application No. 1039 of 2019 is disposed of.

M. S. SONAK, J

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