

Vinita

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 366 OF 2023

SUKA VITHAL GOVEKAR REP. BY POA THE
PETITIONER NO.5 AND 4 ORS.Petitioners.

VS
THE DEPUTY COLLECTOR AND SDO
PANAJIRespondent.

Ms. Saizeen B. Shaikh, Advocate for the petitioners.
Mr. Shivdatt P. Munj, Addl. Govt. Advocate for the respondent.

CORAM: PRAKASH D NAIK, J

DATED: 7th September 2023

ORAL ORDER.

1. The petitioners have challenged the impugned order dated 31.3.2023 passed by the Administrative Tribunal rejecting the application for condonation of delay in filing appeal under Section 188(1)(c) of the Goa Land Revenue Code, 1968 against the order dated 9.11.2018, whereby application for conversion dated 17.9.2014 filed by the petitioners was rejected by the Deputy Collector and SDO, Panaji Goa.

2. Section 189(1) of the Goa Land Revenue Code, 1968 provides that first appeal shall not lie after expiry of 60 days from the date of the order appealed against. Section 195 of the the Goa Land Revenue Code, 1968 provides that provisions of Sections 4, 5, 12 and 14 of the Limitation Act shall apply to the

filing of the appeal or application for revision or review under the Goa Land Revenue Code, 1968. Tribunal has power to condone the delay by virtue of Section 195 of the Goa Land Revenue Code, 1968 and the provisions of the Limitations Act.

3. Petitioners claimed to be owners in possession of plot admeasuring 345 sq. mts. surveyed under survey no. 18/2-B. Vide order dated 9.11.2018, respondent informed the petitioners that their application for conversion was rejected and the matter was disposed of.

4. Petitioners approached Administrative Tribunal by filing an appeal under Section 188(1)(c) of the Goa Land Revenue Code, 1968 and application for condonation of delay vide Misc. Civil Application No. 277/2022. The said application was rejected vide order dated 31.3.2023.

5. Learned counsel for the petitioners submitted that petitioners had applied for conversion of their property by preferring an application dated 17.9.2014. The said application was preferred under Section 32 of the Goa Land Revenue Code, 1968. Vide letter dated 9.11.2018 the respondent informed the petitioners that the application for conversion was rejected and the matter is disposed of. Petitioners were not heard before passing the said order. Letter forwarded to the petitioners was

not in the form of order. Petitioners were under bonafide belief that their application under Section 32 of the Code was pending. Vide application dated 7.1.2022 petitioners made an inquiry with the office of the respondent. Vide letter dated 22.3.2022 respondent enclosed letter dated 9.11.2018 having realised that letter dated 9.11.2018 is an order is required to be construed as rejection of order of the petitioners' application dated 17.9.2014. Petitioners approached Administrative Tribunal by preferring an appeal under Section 189 of Goa Land Revenue Code, 1968 and on account of limitation, petitioners filed application for condonation of delay of three years, three months and 14 days in filing the said appeal. Application for condonation of delay was rejected. Petitioners would neither gain by not reacting to the letter dated 9.11.2018 nor there was any material before the Administrative Tribunal to indicate that the petitioners would gain by not filing an appeal against the order dated 9.11.2018. Impugned order does not find any malafides on the part of the petitioners. Cause shown by the petitioners in the condonation of delay was probable. The Tribunal ought to have condoned the delay.

6. Learned Counsel for the petitioners has relied upon following decisions:-

- i. *N. Balakrishnan Vs M. Krishnamurthy*, ¹
- ii. *Esha Bhattacharjee Vs Managing Committee of Raghunathpur Nafar Academy and others*²

7. Learned Addl. Govt. Advocate for the respondent submitted that delay was inordinate. Petitioners were not diligent in exercising their rights to challenge the impugned order. Petitioners had not shown sufficient cause to condone the delay. There was no explanation for condoning the delay of more than 3 years. On receipt of the letter dated 9.11.2018, petitioners had acknowledged that their application for conversion has been rejected. After a long gap thereafter the petitioners preferred appeal challenging the impugned order rejecting the application for conversion. The Tribunal has rightly rejected the application for condonation of delay.

8. Factual matrix of the present case reveal that petitioners had preferred an application for conversion of their property on 17.9.2014. After long gap, letter dated 9.11.2018 was issued to the petitioners communicating that application is rejected. Communication was in the form of letter and not any formal order. Without going into the issue whether the application for conversion was required to be rejected by passing any formal

¹ (1998) 2 SCC 123

² (2013) 12 SCC 649

order or in the form of communication as made in the present case, it does not appear that the petitioners acts were deliberate to delay the challenge to the proceedings or that there were any malafides on the part of the petitioners for challenging the application for rejection belatedly. It is true that delay was more than three years but there is no material to indicate that petitioners would not gain by filing an appeal against an order dated 9.11.2018.

9. The Apex Court in the case of Collector ***Land Acquisition, Anant Nag and anr. Vs Mst. Katiji and ors, AIR 1987 SC 1353*** has observed that legislature has conferred the power to condone delay by enacting Section 5 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on merits. The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose for the existence of the institution of Courts. Ordinarily a litigant does not stand to benefit by lodging an appeal late, refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. When delay is condoned the

highest that can held is that a cause would be decided on merits after hearing the parties. Every day's delay must be explained does not mean that a pedantic approach should be made. The doctrine must be applied in a rational common sense in pragmatic manner. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of malafides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

10. Apparently the aforesaid decision was placed for consideration before the Appellate Tribunal. However, decision was distinguished on the basis of the fact that there was delay of four days in that case and sufficient cause existed for the delay.

11. In the case of **N. Balakrishnan Vs. M. Krishnamurthy** (supra), in paragraphs 11, 12 and 13 it is observed as follows:-

“11 Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of

providing a legal remedy is to repair the damage caused by reason of legal injury. The Law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the Courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicate ut sit finis litium(it is for the general welfare that a period be put to litigation) Rule of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy be kept alive for a legislatively fixed period of time.”

“¹² A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" under [Section 5](#) of the Limitation Act

should receive a liberal construction so as to advance substantial justice vide Shakuntala Devi Jain Vs. Kuntal Kumari [AIR 1969 SC 575] and State of West Bengal Vs. The Administrator, Howrah Municipality [AIR 1972 SC 749].”

“13 *It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of malafides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. While condoning delay the court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quiet a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall*

compensate the opposite party for his loss”.

12. In the case of ***Esha Bhattacharjee Vs. Raghunathpur Nafar Academy*** (supra) the Apex Court summarised the principles to be followed while dealing with application for condonation of delay and approach to be adopted while considering the grounds of condonation which are as follows:-

- i) There should be a liberal, pragmatic, justice-oriented, non- pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.*
- ii) The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact- situation.*
- iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.*
- iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.*
- v) Lack of bona fides imputable to a party seeking*

condonation of delay is a significant and relevant fact.

vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the

paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

xiv) An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

xv) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

xvi) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

xvii) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchallant manner requires to be curbed, of course, within legal parameters.

13. In *G. Ramegowda, Major and others v. Special Land Acquisition Officer, Bangalore*[2], in paragraph 14 it was observed as follows:-

The contours of the area of discretion of the

14. *courts in the matter of condonation of delays in filing appeals are set out in a number of pronouncements of this Court. See : Ramlal, Motilal and Chhotelal v. Rewa Coalfield Ltd.[3] ; Shakuntala Devi Jain v. Kuntal Kumari[4] ; Concord of India Insurance Co. Ltd. V. Nirmala Devi[5] ; Lala Mata Din v. A. Narayanan[6] ; Collector, Land Acquisition v. Katiji etc. There is, it is true, no general principle saving the party from all mistakes of its counsel. If there is negligence, deliberate or gross inaction or lack of bona fide on the part of the party or its counsel there is no reason why the opposite side should be exposed to a time-barred appeal. Each case will have to be considered on the particularities of its own special facts. However, the expression ‘sufficient cause’ in Section 5 must receive a liberal construction so as to advance substantial justice and generally delays in preferring appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of the delay.”*

14. The Petitioners have shown sufficient cause for condonation of delay. In the light of principles enunciated in above decisions delay in preferring the appeal by the petitioners can be condoned.

ORDER

- (i) Writ Petition is allowed.
- (ii) Order dated 31.3.2023 passed in MCA No.77/2022 by the Administrative Tribunal is set aside and the delay in preferring the appeal before the Administrative Tribunal is condoned.
- (iii) Administrative Tribunal shall decide the appeal preferred by the petitioners under Section 188(1)(c) of the Goa Land Revenue Code, 1968 challenging the order dated 9.11.2018 on merits and in accordance with law.
- (iv) Petitioners shall appear before the Administrative Tribunal on 9.10.2023 at 11.00am.
- (v) Writ Petition is disposed of.

PRAKASH D. NAIK, J.

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