

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA
MISC. CIVIL APPLICATION NO. 208 OF 2023
IN
CIVIL APPLICATION (REVIEW) NO. 1268 OF 2023 (F)

The Goa Foundation, through its Secretary, Dr.
Claude Alvares, age 75 years, Having Regd. ... Applicant
Office at Room no. 7, Above Mapusa Clinic,
Mapusa-Goa

V e r s u s

1. Shri Parimal Rai, Office of the Chief
Secretary, Secretariat, Porvorim, Goa. 403521.
2. Shri Puneet Kumar Goel, Secretary
(Environment), c/o. Secretariat, Porvorim, Goa
– 403521.
3. Shri Johnson Bedy Fernandes, former M. S.
of the G.C.Z.M.A., currently Member Secretary,
Directorate of Settlement and Land Records,
Collectorate Building, Swami Vivekanand
Road, Near Military Head Quarters, Panaji-
Goa – 403001.
4. V. M. Salgaocar Corporation Private
Limited, having its registered office at
Salgaocar Centre, E4, Murgaon Estate, Off ... Respondents.
Airport Road, Chicalim, Goa – 403711.

Ms. Norma Alvares, Advocate with Mr. Om D’Costa, Advocate for
the Applicant.

Mr. S. R. Rivankar, Senior Advocate with Mr. Rama Rivankar,
Advocate for Respondent no. 3.

Mr. Nitin Sardesai, Senior Advocate with Mr. Jitendra
Supekar, Advocate for Respondent no.4.

**CORAM: PRAKASH D. NAIK &
B. P. DESHPANDE, JJ.**

DATE: 13th October, 2023

P. C.

1. Heard both sides.
2. The Applicant is seeking condonation of delay in filing Civil Application (Review) no. 1268 of 2023 seeking partial review of the Judgment and Order dated 30.09.2022 passed by this Court in Contempt Petition No. 2 of 2020.
3. The Contempt Petition no. 2 of 2022 was dismissed by this Court vide Order dated 30.09.2022. While dismissing the said Petition, it was observed that, the Contempt Petition is an abuse of process of law, it cannot be dismissed simpliciter but, it has to be dismissed with costs. Accordingly, the Contempt Petition was dismissed with costs of ₹50,000/-. The Petitioner was directed to deposit the said costs with Goa State Legal Services Authority within two weeks from the date on which the copy of the Order is made available. Apparently, the Applicant has complied the said Order.
4. The Order dated 30.09.2022 was challenged before the Apex Court vide Special Leave Petition (Civil) no. 953 of 2023. The Special Leave Petition was disposed off by order dated 28.02.2023. With regards to the imposition of costs by this Court, it was observed that

cost is normally a discretion of the Court and it was left to the Petitioner to move the High Court pointing out the facts referred therein for seeking waiver of costs.

5. This application for condonation of delay was filed on 14.06.2023. The Respondent no.4 filed affidavit in reply dated 01.09.2023 opposing the application. The Applicant filed additional affidavit dated 08.09.2023 and affidavit in rejoinder dated 08.09.2023.

6. Learned Advocate Ms. Norma Alvares, appearing for the Applicant, submitted that the review application is preferred to the limited extent of reviewing the observations in paragraphs 36 and 37 of the Order dated 30.09.2022 passed by this Court in Contempt Petition no. 2 of 2020 for deleting the words “*abuse of process of law*” and directions to pay a sum of ₹50,000/- as costs. It is submitted that the Order dated 30.09.2022 was challenged before the Apex Court by preferring Special Leave Petition (Civil) no. 953 of 2023, which has been disposed of by recording the submissions of the learned Advocate for the Applicant that the Applicant is a voluntary organisation with 30 years of history and it is in pursuance to the contempt proceedings filed in question that two of the three offending structures were subsequently demolished. As far as retaining wall is concerned, though the Applicant may have different perception from what the concerned

Court had taken, the Applicant will exercise its right to assail that order in accordance with law whether that retaining wall can or cannot be retained. The Hon'ble Supreme Court permitted the Applicant to move the High Court seeking waiver of costs. There was no possibility of any immediate filing in the matter after the Judgment dated 30.09.2022 was passed, as the Secretary of the Applicant organisation, present deponent, who is conversant with the history and facts of this case, since it's inception from 1993, and who is also authorised to file Court proceedings, suffered a major heart attack within the month on 23.10.2022 and was required to take three to four months strict home rest. The Applicant was convinced that the issue of costs imposed could be covered in a composite Special Leave Petition before the Hon'ble Supreme Court challenging the dismissal of Contempt Petition vide Judgment dated 30.09.2022 including the issue of imposition of costs. It was also not possible for the Applicant to immediately move the Hon'ble Supreme Court and, resultantly, the Special Leave Petition was filed before the Supreme Court on 05.01.2023. The Hon'ble Supreme Court was of the view that High Court was right in pointing out to the Petitioner that without challenging the GCZMA Order as to whether the retaining wall can or cannot be retained. The Applicant has filed a substantial Petition challenging the GCZMA order as to whether the retaining wall can or cannot be retained which is pending before this Court for adjudication. Pursuant to the Hon'ble Supreme

Court's Order, the Applicant has approached this Court. The Applicant received the copy of the Supreme Court's order in the first week of March, 2023. The instant application was filed on 14.06.2023 shortly after the reopening of the Court, post vacation. Leaving aside the vacation period, the Applicant has approached this Court for review of the Order on costs around two months after the order passed by the Apex Court. The reason that the Applicant did not approach this Court immediately after the Supreme Court disposed off the Special Leave Petition, is because the Applicant believed that it would not be appropriate to approach this Court for waiver of cost without showing its bonafide and assailing the order of Goa Coastal Zone Management Authority (GCZMA) on the removal of the wall which the Courts considered as the appropriate course of action if the Applicant was aggrieved by non-compliance of the authorities with the directions of this Court. The delay was not deliberate. The delay may be condoned.

7. Learned Senior Advocate Mr. Nitin Sardesai, appearing for Respondent no.4, submitted that the Applicant has not shown sufficient cause to condone delay. The Applicant has not computed the delay while preferring the application for condonation of delay. The Applicant has not given plausible explanation for condoning the delay. The Applicant has contended that the Secretary of the Applicant had suffered heart attack on 23.10.2022 and was required to take rest. The

review application was filed on 14.06.2023. The Applicant had filed Interlocutory Application no. 106 of 2023 in Original Application no. 54 of 2023 before the National Green Tribunal, Western Zone Bench, Pune, seeking condonation of delay in filing Original Application, wherein prayer was made that the Respondent no.1 be declared to demolish the concrete structure or embankment in its entirety constructed by the Respondent thereon. In the said application, it was stated that the Director of the Applicant organization who was the authorized signatory and was conversant with the particular matter, suffered a heart attack in the third week of October, 2022 and was advised rest for a period of three months. However, the said application was filed on 13.04.2023, whereas the application for review has been filed before this Court on 14.06.2023. The Applicant had passed Resolution which has not been annexed to this application but part of PILWP No. 26 of 2023, which states that the President or the Secretary to approach appropriate fora including the NGT, High Court and Supreme Court in respect of the Public Interest matters approved for filing after discussion at the AGM held on 13th August, 2021. The application could have been filed by either authorised representative. The submissions made by the Applicant before the Apex Court in Special Leave Petition (Civil) no. 953 of 2023, were not correct. The Hon'ble Supreme Court has not granted liberty to the Applicant to file review Petition challenging order of costs. The Apex Court has

observed that it is upto the Applicant to move the High Court for waiver of costs. The Applicant has failed to explain enormous delay in filing review application after the disposal of the Special Leave Petition. The parties who seek condonation of delay has to make out sufficient cause and explain each and everyday's delay in filing the application. The Applicant has failed to discharge the said burden and accordingly the application deserves to be dismissed.

8. Learned Senior Advocate Mr. Rivankar, appearing for Respondent no.3, submitted that the Applicant took four months to initiate the proceedings before the Apex Court challenging the order dated 30.09.2022. After disposal of Special Leave Petition, the review application is preferred belatedly. Parties were dragged to Court to contest proceedings. In the event this Court condones the delay, costs may be imposed against the Applicant for condoning delay.

9. It is settled law that there must be liberal, pragmatic, justice-oriented and non-pedantic approach while dealing with an application for condonation of delay for the Courts are not supposed to legalize injustice but are obliged to remove injustice.

10. In the case of **Collector, Land Acquisition vs. Katiji**¹ the Apex Court had observed that the legislature has conferred power to

¹ (1987) 2 SCC 107

condone delay by enacting Section 5 of the Indian Limitation Act, 1963, in order to enable the Court to do substantial justice to the 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, for that is the life-purpose for the existence of the institution of courts. The Apex Court emphasized on adoption of a liberal approach while dealing with the applications for condonation of delay as ordinarily a litigant does not stand to benefit by lodging an appeal late and refusal to condone delay can result in a meritorious matter being thrown out at the very threshold and the cause of justice being defeated. It was stressed that there should not be a pedantic approach but the doctrine that is to be kept in mind is that the matter has to be dealt with in a rational commonsense pragmatic manner and cause of substantial justice deserves to be preferred over the technical considerations. It was also ruled that there is no presumption that delay is occasioned deliberately or on account of culpable negligence and that the courts are not supposed to legalise injustice on technical grounds as it is the duty of the court to remove injustice.

11. It is pertinent to note that the Applicant had challenged the Order dated 30.09.2022 passed by this Court in Contempt Petition no. 2 of 2020, before the Apex Court. Apparently, there was delay in

challenging the said Order before the Apex court by preferring the Special Leave Petition (Civil) no. 953 of 2023. The said Petition was disposed off vide Order dated 28.02.2023. The order indicates that the delay in preferring the said Petition has been condoned. While passing the order dated 28.02.2023, the Apex Court had recorded the submissions of the Applicant, that there is no occasion to impose costs when it is only in pursuance to the contempt proceedings that the two of the three structures were subsequently demolished. As far as the retaining wall is concerned, it was submitted that though the Petitioner may have different perception from what the concerned Court had taken, the Petitioner will exercise its right to assail that order in accordance with law whether that retaining wall can or cannot be retained. It was then observed that cost is normally discretion of the Court and it was left to the Applicant to move the High Court pointing out the facts referred to in the said Order seeking waiver of costs. The Applicant has preferred a review petition. Apparently the Applicant had challenged the order passed by GCZMA by preferring substantial petition which is pending adjudication. We are not considering the merits of the said Petition nor the merits of the review petition preferred by the Applicant but are concerned, at this stage, for condonation of delay in preferring the review petition. The contents of the application for condonation of delay, additional affidavit of the Applicant and the affidavit in rejoinder filed by the Applicant,

sufficiently explains the time spent in preferring the review application. We are of the considerate opinion, that sufficient cause has been shown by the Applicant. While condoning delay, we are not required to adopt a rigid approach. As laid down by the Apex Court in various decisions, the Court is required to adopt a liberal and pragmatic approach unless the delay is inordinate, the explanation offered is concocted or the grounds urged in the application are fanciful. The delay in preferring review application need to be condoned. We are not inclined to impose any cost for condoning delay.

ORDER

- (i) Misc. Civil Application no. 208 of 2023 is allowed.
- (ii) The delay in preferring Civil Application (Review) No. 1269 of 2023, is condoned.
- (iii) No order as to costs.
- (iv) Application stands disposed of.

BHARAT P. DESHPANDE, J PRAKASH D. NAIK, J

ANDREZA PEREIRA Digitally signed by ANDREZA PEREIRA
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