

Vinita

**IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.105 OF 2023.**

DAMU GAJANAN NAIK AND ANR. ... Petitioners.
VS
SHARMILA DINESH NAIK ...Respondent.

Mr. P. Sawant, Advocate for the petitioners.

CORAM: M. S. KARNIK, J
DATED: 20th APRIL 2023

P.C.

1. Heard Mr. P. Sawant, learned counsel for the petitioners.
2. This petition challenges the order dated 02.05.2019 passed by the Appellate Court condoning the delay of 112 days in filing the appeal. It is the contention of the learned counsel for the petitioner that the application for condonation of delay in filing the appeal is as vague as the impugned order. According to the learned Counsel, there are hardly any reasons assigned by the Appellate Court indicating that there was sufficient cause to condone the delay. It is further submitted that the medical certificate annexed along with the application for condonation of delay is of a homeopathic doctor and does not specify the period of sickness or nature of the sickness. Learned counsel further submitted that while condoning the delay, the Appellate Court did not even find it necessary to impose sufficient cost. I have gone through the impugned order. The delay is of 112

days in preferring the appeal. The medical certificate annexed along with the application mentions that the patient is feeling better and fit to work.

3. No doubt, the appellant should have furnished better particulars and materials in support of her application. However, the application does record that due to the appellant's sickness, she was under mental and physical stress and therefore, the appellant could not file an appeal within time.

4. Heard. I have gone through the application for condonation of delay and the impugned order.

5. The learned Appellate Court relied upon the decisions of the Hon'ble Supreme Court in the case of ***Collector Land Acquisition, Anantnag and anr. Vs Mst. Katiji & ors 1987 SCC(2) 107 and Esha Bhattacharjee Vs Managing Committee of Raghunathpur Nafar Academy & others, 2013 o AIR (SCW) 6158***, while holding that the delay deserves to be condoned. In the present facts, considering that the delay is of 112 days, I do not find it appropriate to interfere with the impugned order as the Appellate Court found the cause for condonation as sufficient. Tthe application was supported by a medical certificate, may be from a homeopathic doctor. There is some justification in the submission

of the learned counsel the petitioner that at least cost could be imposed. Considering the length of delay and in the light of the view taken by the Appellate Court, though I refrain from interfering with the impugned order, in the interest of justice the respondent could be directed to pay cost of Rs.1,000/- to the petitioners within a period of four weeks from the date of service of this order upon her. The delay is not such that the same cannot even be condoned by imposing suitable cost. I am conscious that this order is passed by me without issuing a formal notice to the respondent. If the respondent is not satisfied with this order imposing cost on her, it is open for the respondent to approach this court seeking recall of this order in which case she will be duly heard. Keeping this liberty open, Writ Petition stands rejected.

M. S. KARNIK J.

VINITA VIKAS NAIK Digitally signed by VINITA VIKAS
NAIK
Date: 2023.04.25 12:56:53 +05'30'