

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITIONS NO. 362, 363 & 364 OF 2022

MRS. MARY JAYNE DIAS PINHEIRO,
Daughter of Mr. Alfredo Dias,
about 40 years in age, c/o Zita D'Mello,
H. No. 106, Carvalho Apartment,
Comba, Margao-Goa.

.... Petitioner.

Versus

1. MRS. EVELYN RICHARD D'SOUZA
NEE EVELYN PINHEIRO,
Daughter of Late Mr. Evito Pinheiro,
married, resident of Flat No. 602,
6th Floor, Arsha Villa, 49, St. Francis
Avenue, Santa Cruz/(W), Mumbai.

2. MR. BRIAN PINHEIRO,
Son of Late Mr. Evito Pinheiro,
bachelor, resident of Flat No. 8,
Tanwar House, Jaybharat Society,
3rd Road Khar (West), Mumbai.

3. MR. BEVIT ANTONIO ALVARO
PINHEIRO,
Son of Late Mr. Evito Pinheiro,
bachelor, resident of Flat No. 8,
Tanwar House, Jaybharat Society,
3rd Road Khar (West), Mumbai.

4. STATE OF GOA,
through the Chief Secretary,
having Office at Secretariat, Porvorim-Goa.

... Respondents.

Mr Jatin Ramaiya, Advocate under Legal Aid Scheme for the
Petitioner.

Mr A.B. Salkar, Advocate for Respondents No.1 to 3.

Ms Sulekha Kamat, Addl. Govt. Advocate for Respondent
No.4 in WP No.362/2022.

Mr V. Sardesai, Addl. Govt. Advocate for Respondent No.4 in

WP No.363/2022 and
Mr Tukaram Gawas, Addl. Govt. Advocate for Respondent
No.4 in WP No.363/2022.

CORAM : M. S. SONAK, J.

DATE : 7TH SEPTEMBER 2023

ORAL JUDGMENT :

1. Heard Mr Jatin Ramaiya, who appears under the Legal Aid Scheme for the Petitioner, Mr A.B. Salkar for Respondents No.1 to 3, in all these Petitions, Ms Sulekha Kamat, Addl. Govt. Advocate for Respondent No.4 in WP No.362/2022, Mr V. Sardessai, Addl. Govt. Advocate for Respondent No.4 in WP No.363/2022 and Mr Tukaram Gawas, Addl. Govt. Advocate for Respondent No.4 in WP No.364/2022.
2. Rule in each of these Petitions. At the request of and with the consent of the learned Counsel for the parties, Rule is heard immediately.
3. In all these Petitions, the challenge is to the Tribunal's order holding that the second appeal was not maintainable before it and that the same should have been filed before the Collector. On the ground of maintainability, the Tribunal has dismissed the second appeals instituted by the Petitioner.
4. The learned Counsel for the parties point out that this Court in the case of *Smt. Chandralekha Chandrakant Naik and ors. vs. Anant Yeshwant Naik Gaonkar & anr.* - Writ Petition No.354/2022, decided on 18th August 2023, has held that in such matters an appeal properly lies before the Collector and not the

Tribunal. To that extent, therefore, the Tribunal's order warrants no interference.

5. However, in *Smt. Chandralekha Chandrakant Naik* (supra), this Court has held that the Tribunal, in such circumstances, should not have proceeded to straight away dismiss the appeal, instead, the Tribunal should have returned the appeal memo to the Appellants for presenting the appeal before the appropriate authority *i.e.* the Collector of the respective District. To that extent, the Tribunal's orders were modified.

6. Following the decision in *Smt. Chandralekha Chandrakant Naik* (supra), the impugned orders made by the Tribunal are required to be modified. The reasoning in *Smt. Chandralekha Chandrakant Naik* (supra), including the reasoning in paragraph 23, applies in these Petitions, as well.

7. Accordingly, the impugned orders are modified and the Tribunal must now return the appeal memos to the Petitioner within 15 days from the Petitioner filing an authenticated copy of this order before the Tribunal. Mr Ramaiya states that such an authenticated copy will be filed before the Tribunal within 15 days from today.

8. Mr Ramaiya states that the Petitioner will file the returned appeal memos before the Collector of South Goa within 30 days from their returning by the Tribunal. If this is done, the Collector or the Additional Collector, South Goa, as the case may be, must dispose of the Petitioner's second appeals on their own merits and in accord with law, without adverting to the issue of limitation provided the second appeals before the Tribunal were instituted

within the prescribed period of limitation. If there was any delay in instituting the second appeals before the Tribunal, then, the Petitioner will have to file applications for condonation of delay. The appellate authority, however, must exclude the period spent by the Petitioner before the Tribunal or this Court from consideration or hold that this period is satisfactorily accounted for. This is because the Petitioner was indeed pursuing the matter before the Tribunal and after that, before this Court, bonafidely. There was some genuine confusion about the forum of appeal.

9. The impugned orders of the Tribunal are modified in the above terms. It is clarified that this Court has not examined the merits of the matter and, therefore, merits of the matter are left open for the Collector or the Additional Collector, as the case may be, to examine. All contentions of all parties, including those of Respondents No.1, 2 and 3, are explicitly left open.

10. Rule in each of these Petitions is disposed of in the above terms. There shall be no order for costs.

11. The efforts put in by Mr Jatin Ramaiya, who appeared on behalf of the Petitioner under the Legal Aid Scheme, deserve to be appreciated. The Goa Legal Services Authority must pay his fees according to the rules. The fees are in addition to the gratitude which this Court expresses to Mr Ramaiya for the assistance rendered by him to the Petitioner and this Court.

12. All concerned to act on an authenticated copy of this order.

M. S. SONAK, J.