

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA

MISC.CIVIL APPLICATION NO.495 OF 2023

ANTONIO D SOUZA (SINCE DECEASED)
THR LRS AND 7 ORS

... APPLICANT

Versus

STATE OF GOA THR. CHIEF SECRETARY
AND 4 ORS

... RESPONDENTS

Mr Vilas P. Thali and Mr Rajdeep Prabhugaonker, Advocates for the
Applicants.

Ms Sulekha Kamat, Additional Government Advocate for
Respondent Nos. 1 and 2.

CORAM:- M. S. SONAK, J.

DATED :- 8th December, 2023

P.C.:

Heard Mr R. Prabhugaonker, learned counsel for the
Applicants and Ms S. Kamat, learned Additional Government
Advocate for Respondent Nos. 1 and 2.

2. This is an application seeking condonation of delay in filing an
accompanying appeal.

3. Mr Praghugaonker states that the delay in this case is 65 days
and the same was occasioned for reasons referred to in paras 4 to 14 of
the application seeking condonation of delay. Mr Prabhugaonker

pointed out that the Applicants constitute a group of almost 25 persons belonging to different families and therefore, collective decision had to be taken for the institution of the appeal. He pointed out that the Applicants are agriculturists and they had to hold meetings amongst themselves and after that engage an Advocate. Some time was spent in obtaining signatures and collecting funds for the institution of the appeal.

4 Mr Prabhugaonker submitted that sufficient cause is shown and the Applicants have gained nothing by delaying the institution of the appeal. He pointed out that one of the Applicants is more than 80 years old.

5 Mr Prabhugaonker states that the contesting parties are only Respondent Nos.1 and 2. He points out that the remaining Respondents were co-defendants in the suit. However, since their Vakalatnama could not be obtained, they have been impleaded as Respondents.

6 Ms Kamat submitted that the delay is not only 65 days but in terms of our calculations the delay will be almost 464 days. She referred to a certified copy of the decree and the dates referred to therein. She submitted that this appeal was filed on 11.10.2023 and therefore, the delay was not 65 days but almost 464 days. Mr Prabhugaonker clarified that the appeal was filed on 09.11.2022. This

statement of Mr Prabhugaonker is borne out of the records. He further explained that the decree was not filed along with the certified copy of the judgment and such decree was applied for later on. He submitted that Ms Kamat was referring to the endorsement on the decree and not on the certified copy of the judgment.

7. The above explanation is also borne out of the records. Even assuming that the appeal had to be filed against the decree. Still, sufficient cause is shown and this is not at all the case where there was any lack of diligence on the part of the Applicants. Detailed reasoning have been set out in the Civil Application and there is no counter filed by the Respondents to challenge the facts pleaded in the application. Even otherwise, the fact as pleaded deserves to be accepted and the delay deserves to be condoned.

8 Accordingly, Misc. Civil Application No.495 of 2023 is allowed and the delay in instituting the First Appeal is condoned.

9 Misc. Civil Application No.495 of 2023 is disposed of.

M. S. SONAK, J.