

Niti

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.21 OF 2019

PREMANAND NAVELKAR
AND ANR.

....PETITIONERS

Versus

MADHAV G. POI
RAITURKAR (DEC) THR.
HIS LRS.

....RESPONDENTS

Mr. Gaurang Panandiker, Advocate for the Petitioners.

CORAM : M. S. SONAK, J.

DATE : 10th FEBRUARY 2023

ORAL ORDER :

1. Heard Mr. Gaurang Panandiker for the petitioners.
2. This petition challenges order dated 29.06.2018 made by the learned District Judge declining to condone delay of 338 days in instituting a Review Petition in respect of judgment and order dated 28.07.2015.
3. The record shows that the petitioners instituted a Second Appeal against judgment and order dated 28.07.2015. However, after the Second Appeal was heard for some time on 21.04.2016, (at the stage of admission), the learned Senior Counsel appearing on behalf of

the petitioners, on instructions from the petitioners, stated that the petitioners would file an appropriate application before the First Appellate Court in the context of non-record and non-consideration of certain contentions that were allegedly raised.

4. This Court, by order dated 21.04.2016, granted the petitioners' request for withdrawal of the Second Appeal with liberty to file appropriate application before the First Appellate Court. Even though liberty was granted on 21.04.2016, the Review Petition was filed only on 30.07.2016.

5. The First Appellate Court considers the cause shown and finds that the same was not sufficient to explain the delay of 338 days. The Court has held that the provisions of Section 14(2) of the Limitation Act would not apply in such a situation. Further, the Court also noted that no material was either relied on or produced in support of the cause shown. In paragraph 14 of the impugned order, the Court has recorded the following:

“14. The application does not specify which of the two applicants was sick, which caused the delay. As fairly conceded by Ld. Adv. Shri Panandikar, the applicants have neither relied upon nor produced the medical records of either of the applicants in support of their case. Hence they have failed to make out that ground as the cause for the delay.”

6. Besides, in paragraph 10 of the impugned order, the Court has made the following observations:

“10. As fairly conceded by Ld. Adv. Shri G. Panandikar, there is absolutely no material to support that contentions which were raised in first appeal were neither recorded nor answered by my learned predecessor. Though that would be one of the ground which would be decided on merits, the said fact becomes relevant because time to file the review would start from the time the said fact came to be known to the applicants. However, there is absolutely no evidence as to when that fact came to the knowledge of the applicants.”

7. The First Appellate Court reasoned that merits of the Review Petition cannot be gone into while considering the application for condonation of delay in instituting the Review Petition. However, even if the delay were to be condoned, considering the concession, there was no earthly chance of the Review being allowed.

8. Mr. Panandiker submitted that the petitioner was 85 years old and there were health issues. He submits that even these facts constitute sufficient cause.

9. Therefore, on the ground that no sufficient cause was made out and further considering the above aspect, no case for grant of any relief in this petition is made out by the petitioners.

10. For the above reasons, this petition is dismissed. There shall be no order for costs.

M. S. SONAK, J.

NITI K
HALDANKAR



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