

Santosh

**IN THE HIGH COURT OF BOMBAY AT GOA
MISC. CIVIL APPLICATION NO. 671 OF 2019
IN
STAMP NUMBER (MAIN) 3756 OF 2018 (F)**

CAIRUNNISHA BI XEC ABDUL ... Applicants.
KADER AND 14 ORS.,

Versus

SHAIKH ASIF AND 17 ORS., Respondents.

Mr Parikshit Sawant, Advocate for the Applicants.

Mr Parag Wagle, Advocate for Respondents No.1 to 17.

Ms Vidhati Shetye, Advocate appointed under Legal Aid Scheme for Respondents No.18(a) to 18(e).

CORAM: M. S. SONAK, J.

DATED : 2nd FEBRUARY 2023

P.C.:-

1. Heard Mr Sawant for the Applicants, Mr Parag Wagle for Respondents No.1 to 17 and Ms Vidhati Shetye, appointed under Legal Aid Scheme, for Respondents No.18(a) to 18(e).
2. Mr Sawant submits that all the Respondents have been duly served.
3. There is a delay of 594 days in instituting the Second Appeal. Mr Sawant points out that after the impugned judgment and decree was made on 17/3/2017, the Applicants filed a review

petition on 10/4/2017. The review petition was dismissed on 18/8/2018. After about a month and half, the second appeal was instituted after all case papers were collected and advocates were consulted. He submits that the delay was for sufficient cause and there are no mala fides involved.

4. The learned Counsel for the Respondents oppose the condonation of delay by pointing out that the review petition was misconceived and even after the review petition was dismissed, the second appeal was instituted only after 45 days.

5. I have considered the rival contentions and perused the material on record. The review petition must have been filed by the Applicants based on legal advice. The review petition was dismissed on 18/8/2018, after the same was instituted on 10/4/2017. The review petition was instituted well within 90 days time limit, within which the Appeal could have been filed. Therefore, it does appear that the Applicants-Appellants were pursuing the review under a legal advice.

6. After the review petition was dismissed, the Applicant-Appellant naturally required some time to collect the case papers, consulting lawyers at the High Court level and file this second appeal. There is nothing on record to castigate the Applicants-Appellants as some irresponsible litigant. The Applicants-

Appellants has not derived any undue advantage by filing the appeal late. There are no allegations of any mala fides.

7. Therefore, although there may be some lapse on the part of the Applicants-Appellants, that by itself, is not sufficient for rejecting this application. No doubt, some prejudice will occasion to the Respondents, on whose behalf the condonation of delay is now being opposed. However, this prejudice can be compensated by awarding suitable costs.

8. Accordingly, this civil application is allowed and the delay is condoned subject to the Appellants paying consolidated costs of ₹30,000/- within 4 weeks from today. The amount of costs should be deposited in this Court, after which the parties who are now represented by Mr Wagle and Ms Shetye, are permitted to withdraw ₹15,000/- each. This means that the two sets of Respondents represented by these two lawyers would be entitled to withdraw ₹15,000/- each.

9. Civil Application is disposed of.

M. S. SONAK, J.

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