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IN THE HIGH COURT OF BOMBAY AT GOA

MISC. CIVIL APPLICATION NO.555/2019
IN
STAMP NUMBER (MAIN) NO.4334/2018 (F)

PONDA MUNICIPAL COUNCIL,
THR. ITS CHIEF OFFICER,
NAVNATH K. NAIK ... APPLICANT

Versus

PREMANAND S. VERENKAR ... RESPONDENT

Mr P. Vaze, Advocate for the Applicant.

Mr R. G. Ramani, Senior Advocate with Mr S. Chopdekar and
Mr Rehan Abbasi, Advocates for Respondents No.2 to 5.

CORAM: M. S. SONAK, J.

DATED: 14th September 2023

P.C.:

1. Heard Mr Pranav Vaze for the applicant and Mr R. G. Ramani, learned Senior Advocate who appears along with Mr S. Chopdekar and Mr Rehan Abbasi for respondents no.2 to 5.

2. This is an application seeking condonation of delay of two years and five months in instituting an appeal against the Judgment and Award dated 30.04.2016 made by the Principal District Judge, Panaji, in Civil Misc. Application No.7 of 2016.

3. This appeal was instituted on 22.12.2018. However, the same was filed against Premanand Verenkar despite the fact that the certified copy of the impugned Judgment and Award dated 30.04.2016 very clearly indicated that Premanand Verenkar had already expired and his legal representatives had been brought on record. The certified copy represents this position very clearly and still, the appeal was filed by styling Premanand Verenkar as the respondent.

4. Considerable time was thus spent to rectify this apparent defect. This defect was cured only on 29.01.2020 in pursuance of this Court's order dated 21.01.2020. Mr Ramani, therefore, contends that this appeal should be taken as validly instituted only on 29.01.2020. He submits that the appeal is, therefore of three years and nine months and not two years and five months as urged.

5. Even if the delay is taken as two years and five months as urged by Mr Vaze, the conduct of the applicants, not just in filing an appeal against a dead person with full knowledge of his death but also regarding other matters, cannot be ignored. In fact, *Esha Bhattacharjee v/s. Managing Committee of Raghunathpur Nafar Academy & Ors. - (2013) 12 SCC 649*, relied upon by Mr Vaze, lays down that the conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration.

6. The first reason cited by the applicant is some sort of inaction by the South Goa Planning and Development Authority (SGPDA) officials for reconsidering the issue of road widening and de-notifying the regular line of public street vis-a-vis the respondents' property. There are no details furnished, and the applicant wishes the Court to believe that the matter was being orally pursued with the SGPDA.

7. Even after giving the applicant a long rope, this reason can by no stretch constitute sufficient cause. The impugned judgment and award fixes the compensation payable to the respondents. This payment could not have been avoided by requesting the SGPDA to reconsider the issue of demarcating the regular line of public street vis-a-vis the respondents' property. In any case, nothing prevented the applicant from instituting an appeal and at the same time, pursuing the matter with the SGPDA.

8. The real reason for not filing the appeal either within the prescribed period of limitation or within some reasonable period is disclosed by the applicant in the application in paragraphs 7 to 14. This reason, far from making out a case of sufficient cause, suggests that the reason for the delay in instituting the appeal was not bonafide.

9. In the above-referred paragraphs, the applicant has pleaded that their advocate informed them that as per the normal legal norms and the accepted practice, the applicant would have to deposit a minimum of 50% of the decretal amount, the

impugned order being in the nature of a money decree. It is then pleaded that the applicant, which is a Municipal Council, had some financial constraints and therefore they informed their advocate that the budgetary provision could be made in the ensuing March budget and financial approval could be obtained for instituting appeal only after that. It is then pleaded that the municipal elections were announced and the Code of Conduct was in force.

10. The application then refers to the execution proceedings and the orders of attachment made therein. Surprisingly, in para 15 of the application, it is pleaded that after all this, the applicants were given "legal advice" to once again pursue the matter with the planning authority and try to de-notify the respondents' area. Accordingly, it was pleaded that the matter was orally discussed with the planning authority.

11. The application then refers to the certified copy of the impugned judgment and award being obtained without specifying whether this was applied for and whether it was obtained. There is a casual statement that copy of the impugned award was then misplaced and could not be traced and as such there was further delay in filing the appeal.

12. Considering the above reasons, it will have to be held that no sufficient cause has been shown to explain this inordinate delay. Most of the cause shown reflects on the bonafides which are required to be taken into consideration even in terms of *Esha*

Bhattacharjee (supra) relied upon by Mr Vaze, learned counsel for the applicant.

13. The filing of the Appeal was deliberately delayed to avoid the deposit of the awarded amount in this Court. In the meanwhile, the Applicant not only forced the respondents to file for execution, but even delayed the execution till the respondents were forced to seek attachment of the applicant's properties.

14. Mr Ramani has tendered reply on behalf of the respondents and to this reply is annexed Roznama in the execution proceedings. The Roznama indicates troubles that the respondents had to take to recover an amount of ₹7,61,571/- which was awarded in respondents' favour by the impugned judgment and award. There were several dates in the execution proceedings and ultimately only after attachment orders were made, the amount was paid by the appellant.

15. This appeal has been filed possibly to avoid any proceedings against the officials of the Ponda Municipal Council for their lethargy and inaction in instituting the appeal within the prescribed period of limitation or at least within some reasonable period thereafter. There are no bonafides involved in the reasons stated even if the reasons are accepted.

16. The application is quite casual despite the Hon'ble Supreme Court, in *Esha Bhattacharjee* (supra) stating that the application for condonation of delay should be drafted with careful concern

and not in a haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

17. In *Esha Bhattacharjee* (supra) the Hon'ble Supreme Court was constrained to comment upon an increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner which was required to be curbed, of course, within legal parameters.

18. For all the above reasons, this application is required to be dismissed and is hereby dismissed.

19. Since the respondents have already recovered the amounts under the impugned award though after several difficulties, no costs are awarded in their favour while dismissing this application for condonation of delay.

20. Misc. Civil Application No.555/2019 is dismissed. As a consequence, First Appeal bearing Stamp No.4334/2018 will no longer survive and is disposed of.

M. S. SONAK, J.

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