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IN THE HIGH COURT OF BOMBAY AT GOA
CIVIL REVISION APPLICATION NO.7 OF 2021

BALKRISHNA NAIK

... APPLICANT

Versus

EKNATH G. NAIK

... RESPONDENT

Mr Prasheen Lotlikar with Mr Bhavesh Lotlikar, Advocates for the Applicant.

Mr Kaif Noorani, Advocate under Legal Aid Scheme for the Respondent.

CORAM:- VALMIKI SA MENEZES, J.

DATED :- 18th January, 2024

P.C.:

1. These proceedings impugn order dated 19.03.2020 passed by the District Judge-1, North Goa at Panaji granting Civil Misc. Application No.13/2014 filed by the Respondent herein condoning delay of 1490 days in filing the First Appeal. The appeal challenges the Judgment and Decree dated 27.11.2009 passed by the Ad-hoc District Judge-1 Fast Track Court at Panaji in Special Civil Suit No.88/2005.

2. The main ground on which the District Court has allowed the application for condonation of delay was based upon its finding that the Respondent lacked the financial means to challenge the Decree of the Trial Court by way of an appeal before the District Court. The application for condonation of delay was opposed by the Petitioner

before the Trial Court mainly on the ground that such was not the plea of the Respondent in his application for condonation of delay, as in the application, his main plea to justify delay was that he had visited the office of his Advocate on at least 40 occasions to pursue the filing of the appeal, which was to no avail. It is further submitted by the Petitioner that the reasons for delay further elaborated in the application that the Respondent applied for certified copy of the Judgment and Decree of the Trial Court himself, being dissatisfied with the services provided by his Advocate, after which he engaged a new Advocate to pursue the filing of this appeal; hence the delay.

3. The District Judge, in her reasoning, in addition to the grounds stated in the application for condonation of delay has also considered the contents of the reply dated 21.03.2014 of the earlier Advocate of the Respondent to a notice dated 24.02.2014 signed by the Petitioner's Advocate. The District Court considered the statements made by the earlier Advocate for the Respondent. In his reply, it is stated that the Respondent, though present in the Trial Court at the time of dismissal of the suit, had told that Advocate, on several occasions, while the matter was still within the period of limitation, that he had no funds to purchase Court fees or to prefer an appeal to challenge the Decree before the Appellate Court. It appears from the reading of the Judgment of the District Court that this is an additional ground accepted by the District Court from the record before it as a valid reason to condone delay.

4. After hearing the learned Counsel for the parties and perusing the Judgment of the District Court, I am of the view that the order of the District Court does not call for any interference. The impugned order no doubt does not restrict itself only to the pleadings in the application for condonation of delay, but also takes into consideration the annexures to the reply of the Petitioner opposing the condonation of delay, which included notices sent by the Petitioner's Lawyer to the erstwhile Lawyer of the Respondent and the reply that, which contains the statements which could also form grounds for condonation of delay.

5. In the case of Sheo Raj Singh (Deceased) Through Legal Heirs and Others vs. Union of India and Another; (2023) 10 SCC 531, it is stated that unless there are compelling reasons for taking a view different from the one taken by the Court that has condoned the delay in filing proceedings, such as the ground where the reasoning is totally extraneous to the record before that Court or the order condoning delay is totally without jurisdiction vested in that Court, the Writ Court in Article 227 of the Constitution of India or a Revisional Court under Section 115 CPC, which is a jurisdiction akin to the one under Article 227 should not interfere with such order.

6. In these circumstances, this would not be a fit case to interfere with the impugned order.

However, note must be taken of the fact that the quantum of delay is considerable and in all fairness, the Petitioner is required to be compensated to some extent for the delay in the proceedings before the Trial Court. In that view of the matter, it will be just if the Respondent is directed to pay cost to the Petitioner in the amount of Rs.2,000/-. The Respondent shall pay to the Petitioner these costs as a condition precedent for proceeding with the hearing of the appeal.

7. The Appellate Court shall proceed to dispose of Regular Civil Appeal No.32/2020 on or before 31.03.2024. The cost shall be deposited within a period of two weeks from today.

8. Civil Revision Application is disposed of in the above terms.

VALMIKI SA MENEZES, J.

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