

Niti

IN THE HIGH COURT OF BOMBAY AT GOA

MISC.CIVIL APPLICATION NO.109 OF 2023

IN

STAMP NUMBER MAIN NO.1845 OF 2019 (F)

NANDA VINAYAK MALVANKAR AND ANR ... APPLICANT

Versus

VELDA ESPERANCE PRECIDES DSOUZA

AND 5 ORS

... RESPONDENTS

Ms P. Volvoikar, Advocate for the Applicant.

Mr Ajay Menon, Advocate for the Respondent Nos.1 and 2.

CORAM:- M. S. SONAK, J.

DATED :- 19th January, 2024

P.C.:

Heard Ms Volvoikar for the applicant and Mr Menon for respondent nos.1 and 2.

2. This is an application seeking condonation of delay of 76 days in instituting the Second Appeal.

3. The reason set out in the application is that after the appellant handed over the case papers to the Advocate in December 2018 and was given an appointment in January, 2019 necessity was felt to examine the records and proceedings of the Trial Court and the First Appellate Court.

4. The appellant, therefore, needed to talk to his Advocate in the Trial Court and the First Appellate Court, who handed over the records available with them in the first week of February 2019. There is a statement that such records were handed over to the Advocate from High Court on 06.02.2019. After that paragraph 6 states that the Advocate from the office, who had two chambers, misplaced the file. Thereafter, the files were searched and ultimately they were found only in the last week of April 2019. The Second Appeal was then drafted and filed immediately. For all this there was 76 days delay and this delay according to the applicants is sufficiently explained.

5. Mr Ajay Menon, learned Counsel for the respondent nos.1 and 2, however, disagrees with the explanation. He states that such an explanation does not constitute sufficient cause. He states that there is no affidavit filed by the Advocates and the affidavit filed by the applicant cannot be said to be based on his personal knowledge.

6. Mr Menon refers to Esha Bhattacharjee V/s. Managing Committee of Raghunathpur Nafar Academy & Ors. - (2013) Law Suit (SC) 810 to submit that applications seeking condonation of delay should not be casually drafted. He submits that this is a clear instance of casual drafting. He also relies on Ajay Dabra V/s. Pyare Ram - (2023) SCC OnLine SC 92 to submit that each day's delay has to be explained and since in the present application each day's delay is not explained, this application be dismissed.

7. After considering the rival contentions and the precedent cited, I think that a case is made out for condoning the delay in instituting the Second Appeal.

8. The applicant has filed an affidavit confirming the contents of the application. The applicant states that the Advocate misplaced the file and therefore there was a delay. The applicant also states that the Advocate required the Trial Court and Appellate Court papers for which some time was spent and ultimately such papers were obtained finally in February 2019.

9. The delay in this case is not inordinate and it is sufficiently explained. The application cannot be said to have been drafted casually without disclosing any sufficient cause.

10. Ajay Dabra (supra) was a matter where hardly any reasons were given which can be said to constitute sufficient cause. Moreover, the Hon'ble Supreme Court found that the appellant who instituted the appeal after hardly of 254 days was an affluent businessman and the hotelier, still the only reason given to explain the delay of 254 days was that the appellant had no sufficient funds to pay the Court fees. The Court found that this reason was unbelievable. The facts in the present case offered are not at all comparable to the facts in Ajay Dabra (supra). Here sufficient cause has been shown explaining the

delay. Even Ajay Dabra (supra) states that explanation of each day's delay should not be taken liberally. Ajay Dabra (supra) also holds that the Court should not be pedantic in their approach while condoning the delay.

11. From the above reasons, the delay of 76 days in instituting the Second Appeal is condoned. Misc. Civil Application No.109/2023 is allowed and disposed of.

M. S. SONAK, J.