

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA
MISC. CIVIL APPLICATION NO.131/2023
IN
CIVIL REVISION APPLICATION NO.1681/2022 (F)

SHRYMANTI @ PRATIBHA
KHEMU @ PRAKASH PAGI ... APPLICANT

Versus

RAJESH GOPI FALDESSAI
AND 2 ORS.

... RESPONDENTS

Ms A. Fernandes, Advocate for the Applicant.

Ms T. Menezes, Advocate for Respondent No.2.

CORAM: M. S. SONAK, J.
DATED: 19th JANUARY 2024

P.C.:

1. Heard Ms A. Fernandes for the applicant and Ms T. Menezes for respondent no.2.
2. Ms Fernandes states that delay is of 97 days and the same was because an appeal was instituted against the impugned order based on an incorrect legal advise. Soon after it was realized that no appeal was maintainable, the same was withdrawn and this revision was instituted. She submits that the appellants were bonafide pursuing an incorrect remedy and there are no malafides involved. She states that the appellant has not gained anything by instituting the revision beyond the period of limitation.
3. Ms Menezes vehemently opposed the application for condonation of delay. She submits that the delay will be more

than 97 days for which no explanation is offered. She also submits that the law is very clear about non-availability of any appeal against an order made in Section 6 Specific Relief Act Suit. Therefore, she submits that the delay should not be condoned.

4. I have considered the rival contentions. In my judgment, the delay is not inordinate. Besides, the same is well explained.

5. There is no dispute that the appellant did prefer an appeal against the impugned order made in a Suit instituted under Section 6 of the Specific Relief Act. Upon realizing that such an appeal was not maintainable and the correct remedy was that of instituting a revision application, the appeal was dismissed as non-maintainable and this revision was instituted. This means that the appellant was diligent and not indolent.

6. There does appear to be a bonafide mistake based upon the legal advice which the appellant received. The cause title states that the appellant is a fisherwoman and therefore, it was not for her to decide whether the correct remedy was that of an appeal or revision.

7. Considering the above factors, a case is made out for condoning the delay. The delay is accordingly condoned.

8. Misc. Civil Application No.131/2023 is disposed of.

M. S. SONAK, J.

SUCHITRA
NANDAN
SINGBAL
Digitally signed by
SUCHITRA NANDAN
SINGBAL
Date: 2024.01.22
15:13:20 +05'30'