

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

**MISC. CIVIL APPLICATION NO.458/2023
AND
MISC. CIVIL APPLICATION NO.2750/2022 (F)
IN
SECOND APPEAL NO.93/2016**

ANGELA MELBA DA GAMA
PINTO (DEC) REP. BY HIS LRS ... APPLICANTS

Versus

ANNA RITA ROSALIA
SULOCHANA VAS AND 6 ORS. ... RESPONDENTS

Ms R. Prazeres, Advocate for the Applicants.
Mr P. P. Singh, Advocate for Respondent No.1.
Mr Nigel Fernandes, Advocate for Respondent No.3.
Mr Raunaq Rao, Advocate for Respondent No.7(i).

CORAM: M. S. SONAK, J.

DATED: 25th JANUARY 2024

P.C.:

1. These applications seek condonation of delay, setting aside the abatement and leave to bring on record the legal representatives of the deceased second respondent. The delay is of 822 days. However, Ms R. Prazeres points out that the second respondent died during the Covid Pandemic and therefore no application could be filed within the prescribed period of limitation. The application also states that how there was

miscommunication between advocates as a result of which there was some delay in filing this appeal.

2. Ms Prazeres pointed out that some of the legal representatives are already on record and in that sense the estate was represented. This is additional ground for allowing these applications.

3. The Hon'ble Supreme Court in *Perumon Bhagvathy Devaswom Perinadu Village v/s. Bhargavi Amma (Dead) by LRS and Others – (2008) 8 SCC 321* has explained that the courts have to be liberal in such matters and lean towards deciding matters on merits rather than terminating them on the ground of abatement. The court has also held that lack of diligence or inaction can be attributed to the appellant only when something required to be done by him, is not done and the appellant is not expected to visit the court or his lawyer every few weeks to ascertain the position nor keep checking whether the contesting respondent is alive.

4. The Hon'ble Supreme Court has held that there is a significant difference between an appeal pending in a lower court and an appeal pending in a High Court where no regular dates are given by the High Court.

5. Considering the principle set out in *Perumon Bhagvathy Devaswom Perinadu Village (supra)*, a case is made out for condoning the delay, setting aside abatement and granting leave

to bring on record the legal representatives of the deceased second respondent.

6. Accordingly, both these applications are allowed in the above terms. Ms Prazeres states that she will carry out necessary amendment within two weeks from today. She says that she will also take necessary steps to serve the legal representatives.

M. S. SONAK, J.

SUCHITRA
NANDAN
SINGBAL

Digitally signed by
SUCHITRA NANDAN
SINGBAL
Date: 2024.01.29
11:04:15 +05'30'