

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

**MISC. CIVIL APPLICATION NO.459/2023
AND
MISC. CIVIL APPLICATION NO.2751/2022 (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 respondent No.7(g). The delay is of 162 days and the same is sufficiently explained.
2. 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.

3. 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.

4. 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 respondent no.7(g).

5. 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 steps will be taken to serve the legal representatives.

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M. S. SONAK, J.