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IN THE HIGH COURT OF BOMBAY AT GOA

MISC.CIVIL APPLICATION NO.195 OF 2023

IN

FIRST APPEAL NO.71 OF 2016

VIRGILO GILBERTO PINTO DE CARVALHO

@ GILBERT PINTO AND ANR

... APPLICANTS

Versus

MARIO VASCO GEORGE AND 5 ORS

... RESPONDENTS

Mr. Haridas Naik, Advocate for the Applicants.

Mr. Shivan Desai with Ms. Riya Amonkar, Advocate for Respondent No. 3.

CORAM:- VALMIKI MENEZES, J.

DATED :- 29th July, 2025

P.C.:

1. This is an application for condonation of delay of about one year in filing an application for restoration of the Appeal and setting aside order dated 05.02.2021, dismissing the Appeal for default in taking steps on the part of the Applicant. The application has been vehemently opposed by Respondent No. 3. Respondent No. 3 has filed a detailed affidavit in reply, making reference to the conduct of the Applicant, more so for the period of 3 years prior to the dismissal of the Appeal. The application has been opposed primarily on the ground that the Applicant has remained absent from 05.12.2016 till 05.02.2021, when the Appeal was dismissed for default. It has been

pointed out that on several dates between 16.08.2017 to 05.02.2021, not only the Applicant not appear, either personally or through Counsel, but failed to take steps to serve some of the unserved Respondents. The Court considered the conduct of the Applicant and dismissed the Appeal for default on 05.02.2021.

2. Learned Advocate Mr. Shivan Desai, appearing for the Applicant, has taken me through the affidavit in reply to substantiate the above submissions.

3. Reliance was placed by the learned Counsel for Respondent No. 3 on Basawaraj and Anr V/s Special Land Acquisition Officer, (2013) 14 Supreme Court Cases 81, Pathapati Subba Reddy (died) by Lrs. And other V/s Special Deputy Collector (LA), 2024 SCC OnLine SC 513 and Sanjay V/s Vinayak in Second Appeal No. 263/2018 decided on 31.07.2023 to contend that sufficient cause has to be shown for the delay and the application is totally devoid of showing any cause for the Applicant's non-appearance from the year 2017 till 2021 demonstrates the conduct which the Court should consider whilst deciding the application.

4. The main grounds cited in the application are that the Applicant is a Senior Citizen, who is presently 79 years old, and owing to the COVID-19 pandemic, he was unable to travel from Pune, where he resides, to Goa, to file an application to condone the delay. The

Applicant's case is that after dismissal of the Appeal for default on 05.02.2021 due to the restrictions owing to COVID-19 pandemic between 15.03.2020 to 28.02.2022, the period declared by the Hon'ble Supreme Court by the various Judgments, which is to be excluded for the purpose of calculating period of limitation for filing an application for restoration, they were able to file the application only on 20.03.2022, immediately after COVID-19 restrictions were lifted.

5. There is no doubt that the Applicant has acted negligently in not pursuing the Appeal between the year 2017 to 2021. There appears to be no reason for default in pursuing the Appeal and having service on the Respondents completed. This was the reason for dismissal for default. Nevertheless, considering the fact that the dismissal for default was ordered on 05.02.2021 and the COVID-19 Pandemic imposed restrictions on the movement of the Applicant residing in Pune between 15.03.2020 to 28.02.2022, this by itself would be a specific reason to exclude the aforementioned period from the period of limitation, otherwise provided for by the limitation Act for restoring the Appeal. The Appeal was dismissed during the COVID-19 pandemic on 05.02.2021, and consequently, the period from 05.02.2021 till 28.02.2022 would require to be excluded from the period of limitation available to the Applicant to file a restoration application. The application came to be filed on 20.03.2022 within 30 days of the COVID-19 pandemic restrictions being lifted on 28.02.2022. There is no doubt that the Judgments cited by the learned

Advocate for the Respondent No. 3 suggest that the conduct of the parties must also be considered by the Court, but in the present case, there seems to be a specific reason and cause for condoning the delay on the facts stated above.

6. For all these reasons, the application for restoration of the Appeal is allowed. The First Appeal bearing No. 71/2016 stands restored to the file.

7. Accordingly, the application stands disposed of.

VALMIKI MENEZES, J.