

(2013) 08 BOM CK 0059
In the Bombay High Court
Case No : Writ Petition No. 367 of 2013

Hermano de Souza (deceased) through his heirs and Others	APPELLANT
Vs	
Agostinho Judas Tadeu de Menezes and Another	RESPONDENT

Date of Decision : 07-08-2013

Acts Referred:

Citation : (2013) 5 ABR 1335 : (2013) 6 ALLMR 674

Hon'ble Judges : F.M. Reis, J

Bench : Single Bench

Advocate : C. Mascarehas, for the Appellant; S. Redkar, for the Respondent

Judgement

F.M. Reis, J.—Heard Mr. C. Mascarenhas, learned counsel appearing for the petitioners and Mr. S. Redkar, learned counsel appearing for the respondents. Rule. Heard forthwith with the consent of the learned counsel.

2. The learned counsel appearing for the respondents waive service.

3. The above petition challenges an order passed by the learned Tribunal dated 09.04.2013 whereby an application for condonation of delay in filing the appeal challenging the judgment passed by the learned Rent Controller of one month came to be dismissed.

4. Mr. Mascarenhas, learned counsel appearing for the petitioners has assailed the impugned order on the ground that the petitioners who have been asked to vacate the suit premises were anxious to challenge the impugned judgment passed by the Rent Controller in appeal and as such the petitioners sought for art urgent certified copy. The learned counsel further pointed out that the petitioners had visited the office of the learned Rent Controller to collect the said certified copy but despite of the numerous visits no such certified copy was supplied. The learned counsel further pointed out that the learned Rent Controller informed the petitioners that the period for filing an appeal is two months and as such, the petitioners collected the certified copy only on 21.12.2012 when the certified copy was ready. The learned counsel further pointed out that on the basis of the

said information given by the learned Rent Controller, the petitioners approached the concerned Advocate only after one month had elapsed and as such, there was delay in filing the appeal. The learned counsel has taken me through the order passed by the learned Tribunal and pointed out that the learned Tribunal has erroneously dismissed the application on the ground that there was no averment as to which of the petitioners had approached the learned Rent Controller or that the allegations made in the application have not been established. The learned counsel further pointed out that in the interest of justice, it would be appropriate to set aside the impugned order passed by the learned Tribunal subject to payment of costs.

5. On the other hand, Mr. S. Redkar, learned counsel appearing for the respondents has supported the impugned order. The learned counsel has pointed out that the petitioners are occupying some premises in the heart of the city at Margao and paying some meager rent and as such no indulgence can be shown to the petitioners. The learned counsel further pointed out that there is nothing on record to suggest that there was sufficient cause which would justify the condonation of delay. The learned counsel has taken me through the impugned order and submitted that the learned Tribunal has rightly appreciated the material on record and come to the conclusion that the petitioners are not entitled to condone the delay.

6. I have considered the submissions of the learned counsel and I have also gone through the records. It is not in dispute that the order impugned is an order directing the eviction of the petitioners from the suit premises. As such, the delay in filing the appeal would not itself create any advantage to the petitioners. Apart from that, the certified copy of the impugned judgment passed by the learned Rent Controller was available only after a prolonged period of time. In such circumstances, the contention of the petitioners that they have approached the learned Rent Controller to obtain the certified copy of the judgment immediately cannot be disbelieved *ex facie*. Considering that it is well settled that the dispute between the parties is to be decided preferably on merits and taking note of the fact that there are no mala fides attributed to the petitioners in deliberately not preferring such appeal in time, I find in the interest of justice and in peculiar facts and circumstances of the case that the learned Tribunal was not justified to refuse to condone the delay. No doubt, such delay is condoned subject to payment of costs to the respondents. The costs are quantified at Rs. 10,000/-. It is to be noted that the Respondents have not disputed the allegations of the Petitioners nor have attributed any mala fides at the Petitioners. No doubt, the allegations in the applications are vague, nevertheless, taking note of the nature of the dispute and the averments by the Petitioners that the information given by the learned Rent Controller has not been disputed by the Respondents, it would be appropriate to condone the delay on the above terms.

7. The learned single Judge of this Court in the judgment, reported in Shri

Dnyandev Vs. Sunita, , has observed at paras 7 and 8 thus:

7. In the case of Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, , the Apex Court observed:

3. The legislature has conferred the power to condone delay by enacting S. 5 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on "merits". The expression "sufficient cause" employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice that being the life purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized mat:--

(1) Ordinarily a litigant does not stand to benefit by lodging an appeal late;

(2) Refusing to condone delay can result in meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this, when delay is condoned the highest that can happen is that cause would be decided on merits after hearing the parties.

(3) "Every day"s delay must be explained" does not mean that a pedantic approach should be made. Why not every hours delay, every seconds delay? The doctrine must be applied in a rational common sense pragmatic manner.

(4) When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non deliberate delay.

(5) There was no presumption that delay is occasioned deliberately, or on account culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay in fact he runs a serious risk.

(6) It must be grasp that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

7-A. Therefore, it follows from the authoritative pronouncement of the Supreme Court and also this Court that while considering the prayer for condonation of delay, various factors are required to be taken into consideration. In the case of Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, the Supreme Court has laid down six principles. The first principle is that ordinarily a litigant does not stand to benefit by lodging an appeal late.

In the fact of this case, by lodging the appeal late, the respondent has not been benefited in any manner."

8. Considering the ratio laid down by this Court, I find that the learned Tribunal was not justified to refuse to condone the delay mainly on the ground that the petitioners have not established as to which of the petitioners approached the learned Rent Controller and who has received the information from the learned Rent Controller or on the assumption that such information would not include that the time taken to obtain the certified copy is to be excluded.

In view of the above, I pass the following:

ORDER

- (i) The impugned order dated 09.04.2013 is quashed and set aside.
- (ii) The application for condonation of delay filed by the petitioners to prefer an appeal before the learned Tribunal is condoned subject to payment of costs of Rs. 10,000/- as condition precedent.
- (iii) Rule is disposed of in above terms.
- (iv) The petition stands disposed of accordingly.