(2016) 01 BOM CK 0097

BOMBAY HIGH COURT (GOA BENCH)

Case No: Writ Petition Nos. 278, 279 and 280 of 2015

Ashok Govind Naik and Others		APPELLANT
	Vs	
Village Panchayat at Marcaim and Others		RESPONDENT

Date of Decision: Jan. 13, 2016

Acts Referred:

- Constitution of India, 1950 - Article 227

Citation: (2016) 2 AIRBomR 199 : (2016) 2 BCR 390

Hon'ble Judges: S.B. Shukre, J.

Bench: Single Bench

Advocate: A. Bhobe, Advocate, for the Appellant; P. Kamat, Advocate, for the Respondent

Final Decision: Allowed

Judgement

S.B. Shukre, J.
1. Heard.

2. Rule. Rule, made returnable forthwith. Heard finally, by consent of the learned Counsel for the parties.

3. These writ petitions are being disposed of by a common order. These writ petitions challenge three orders dated 12/02/2015 separately passed in Civil Miscellaneous Application Nos. 82, 80 and 81 of 2014 by the Ad-hoc District Judge-I (FTC), North Goa, Panaji, Goa, thereby rejecting the applications filed by the petitioner for condonation of delay occurred in filing of the Revision Applications under Section 201-B of Goa Panchayat Raj Act.

4. The Revisions were sought to be filed by the petitioner as the petitioner in all these three Writ Petitions felt aggrieved by allowing of the Appeals of the respondent No. 2, by the Additional Director of Panchayats-II, Panaji, Goa, by orders dated 23/01/2014. By these orders, the Additional Director has issued a direction to

the petitioner in all these petitions, to demolish the illegal structures constructed by him in the properties described in the three appeals. The complaints alleging illegal construction made by the petitioner, were filed by the respondent No. 2 and were on behalf of himself as one of the affected parties and also on behalf of two other persons, in whose respective properties, the structures were alleged to have been illegally erected by the petitioner. It appears that after the complaints were dismissed by the concerned authority, i.e. the Deputy Director of Panchayats, the respondent No. 2 carried the matter in appeal by filing three appeals before the Additional Director of Panchayats-II. The respondent No. 2 succeeded and the petitioner being aggrieved, preferred Revision Applications together with applications for condonation of delay before the competent authority i.e. District Judge. These applications, however, came to be rejected by the orders passed on 12/02/2015 by the learned Ad-hoc District Judge-I and, therefore, the petitioner is before this Court by filing these three writ petitions.

5. Shri Ashwin Bhobe, learned Counsel for the petitioner in all these petitions, submits that the impugned orders suffer from illegality, perversity and arbitrariness as the aspect of lack of malafides has not been properly considered by the learned District Judge. He further submits that the affidavit of the Advocate was not filed by the petitioner because of the fact that it had not been the practice to request an Advocate to swear an affidavit by way of some proof of the contentions raised by the private litigants. He submits that there was nothing on record to show that the explanation given by the petitioner that the delay which mainly occurred because of the failure of his Advocate in informing the passing of the impugned judgment and order did not show sufficient cause. He submits that in the absence of any material to show that explanation was concocted or false, the learned District Judge ought not to have disbelieved the explanation given by the petitioner.

6. Learned Counsel further submits that admittedly, the appeals were closed for orders by the Additional Director on 26/02/2013 and when no communication was received by the petitioner from his Advocate, the petitioner contacted him in December, 2013 to make an enquiry about the passing of the order and thereafter, the petitioner made enquiry about the same with his Advocate in the second week of June, 2014. He submits that at this time, the petitioner came to know about passing of the order. He submits that the reasoning adopted by the learned District Judge that the petitioner has not given any explanation for his not contacting the Advocate for a period of six months from December, 2013 is perverse as there was no occasion for the petitioner to on and off contact his Advocate once it was made known to him that the matter was closed for judgment and order. Thus, he submits that the orders are full of perversity and arbitrariness and deserve to be quashed and set aside. In support, he places reliance upon the judgment of this Court delivered on 10/07/2014 in M.C.A. No. 528/2013 between Arun Nayak v. Ramnath N. Pai.

7. Vehemently opposing the Writ Petition, the learned Counsel appearing for the respondent No. 2 submits that the orders impugned herein cannot be set aside for the simple reason that the view taken by the learned District Judge is possible and this Court, in exercise of its extraordinary jurisdiction under Article 227 of the Constitution of India, can not sit in appeal over the orders passed by the judicial or quasi-judicial authorities. He submits that it is a fact that the petitioner in all the three petitions, has not given any explanation as to why did he not contact his Advocate for a period of 6 months between December, 2013 and June 2014 and this fact itself is sufficient to demonstrate negligence and laziness on the part of the petitioner. He submits that although discretion regarding condonation of delay has to be exercised in a liberal manner, it does not mean that it can be exercised capriciously in an unbridled manner. He submits that if the principle of substantive justice affords a party seeking condonation of delay some right or accommodation, it equally affords a right or accommodation to a party opposing such a prayer, as the right accrued to that party due to negligence on the part of the first party becomes final and cannot be upset just to suit the convenience of the first party. He submits that the Court has to appropriately balance the rights of the party seeking condonation of delay and the rights of the party opposing it. He also submits that the rights conferred by the order sought to be challenged here have now become final.

8. Learned Counsel further submits that the aspect of lack of malafides is one of the considerations for exercise of discretion governing the field of the delay condonation and there are other factors which must be considered by the Court while exercising the same. He submits that the other factors such as conduct, behaviour and attitude of the party as well as failure to submit reasonable explanation must be considered and when these factors do not favour the party seeking condonation of delay, the Court must refuse to exercise discretion in favour of that party. In support, he places reliance on the following cases : (i) Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy and others, , (2013)12 SCC 649, (ii) Balwant Singh (Dead) v. Jagdish Singh and others, , (2010)8 SCC 685, (iii) Lanka Venkateswarlu (Dead) By LRs v. State of Andhra Pradesh and Others, , (2011)4 SCC 363 and (iv) the decision of the learned Single Judge of this Court dated 03/09/2015 delivered in the case of Mr. Bolu Bandodkar v. Diana Zita Agnelo D''Souza (W.P. No. 164/2015).

9. On perusal of the case laws cited on behalf of both sides, one can see that the principles governing the field of delay condonation have been summarised by the Hon''ble Apex Court in the case of Esha Bhattacharjee (supra), by considering various judgments including the judgment in the case of Balwant Singh (supra). These principles, as stated in paragraph 21 of the said case, are as follows :

"21.1. (i) There should be a liberal, pragmatic, justice oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts

are not supposed to legalise injustice but are obliged to remove injustice.

21.2. (ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

21.3. (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4. (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

21.5. (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.6. (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

21.7. (vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.8. (viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

21.9. (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

21.10. (x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

21.11. (xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

21.12 (xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

21.13 (xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

22. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are :

22.1. (a) An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

22.2. (b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

22.3. (c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

22.4. (d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner which requires to be curbed, of course, within legal parameters."

10. Even in the case of Lanka Venkateswarlu (supra), same principles as in the case of Balwant Singh (supra) have been laid down by the Hon''ble Apex Court. In paragraph 28, the Hon''ble Supreme Court has also observed that the concepts such as liberal approach and so on cannot be employed to scuttle the substantive law of limitation. The relevant observations are reproduced thus :

"The concepts such as "liberal approach", "justice oriented approach", "substantial justice" can not be employed to jettison the substantial law of limitation. Especially, in cases where the Court concludes that there is no justification for the delay. In our opinion, the approach adopted by the High Court tends to show the absence of judicial balance and restraint, which a Judge is required to maintain whilst adjudicating any lis between the parties."

11. A perusal of the judgments rendered by the learned Single Judges of this Court in M.C.A. No. 528/2013 and Writ Petition No. 164/2015 disclose that these principles, as discussed earlier, have been followed by the learned Judges while deciding these cases. Therefore, I do not think it necessary to specifically consider the observations made in these cases.

12. Now, it would have to be seen if these principles of law, as laid down in the various decisions of the Hon''ble Apex Court, have been appropriately applied by the learned District Judge to the fact situation of the present case or not.

13. A perusal of the impugned orders show that the discretion has been refused to be exercised on just two grounds. First ground is - no proper explanation for not contacting the Advocate between the period of December, 2013 and June, 2014, has been given and the second ground is - there was sheer negligence on the part of the

petitioner as seen from his engaging an Advocate belatedly that is on 21/08/2014, although the certified copy of the judgment sought to be revised was in the hands of the petitioner as early as on 01/07/2014. These facts and circumstances, in the opinion of the learned District Judge, constituted sheer negligence, lack of due diligence and also showed lack of bonafides on the part of the petitioner.

14. Facts of this case, however, do not show that the view so taken by the learned District Judge is logical or possible. I must say that the approach adopted by the learned District Judge in appreciating the facts only tantamounts to half-hearted attempt to dig out the truth of the matter. Admittedly, the matters were closed for orders on 26/02/2013 and admittedly, the orders were passed on 23/01/2014. After 26/02/2013, the petitioner had contacted his Advocate in December, 2013 and inquired about the case. This was about 10 months from the date on which the matters were closed for orders. About 6 months thereafter, the petitioner again contacted his Advocate sometime in June 2014, when he was told about rejection of his appeals. Such conduct of the petitioner cannot be termed as so negligent or languid as to require explanation to push it into the sphere of diligence and industry. When any matter is closed for judgment or order, there remains nothing for the parties to do and keep on contacting Advocates. It is not uncommon that in such situations, Advocates themselves advise the clients that they need not contact them too often and they would intimate them the result. So, petitioner''s contacting his Advocate twice at intervals of 6 to 10 months cannot be seen as sheer indolence of the petitioner.

15. The petitioner has stated that his Advocate did not inform him about the decisions immediately or within reasonable period of time after the impugned orders were passed. This fact is denied by the respondent No. 2. But, mere denial is not enough and respondent No. 2 must show something to express doubt upon the statement of the petitioner, which he has not. If that is so, there would be no need to substantiate the said statement by an affidavit of petitioner''s Advocate, especially when the cases were closed for orders, orders were not being passed for an unusually long period of time, the period was of about 11 months which was exasperating for any litigant, and even then the petitioner had contacted his Advocate in December, 2013 only to be disappointed to know that the orders were not seeing the light of the day. These circumstances themselves stood in support of the petitioner''s stand and so absence of affidavit could not have been read against the petitioner, nor his word could have been disbelieved. The learned District Judge has not at all considered these aspects of the matter and, therefore, committed perversity in reaching the conclusion that failure to give any proper explanation for not contacting the Advocate for a period of about 6 months would show lack of diligence and also bonafides on the part of the petitioner.

16. There can be no denying the fact that the petitioner waited for a period of about one and half month to contact his Advocate with a view to file Revision Applications

challenging the impugned orders. But, one has to see the intricacies involved in the matter and also the issue of expenses. These things may require some time for an aggrieved person to organize himself and take an appropriate decision regarding filing or not filing of any challenge to the impugned orders. To my mind, the period of one and half month taken by the petitioner in the light of the controversy involved in this case can be considered to be a reasonable period.

17. Viewed in this way, I do not think that there has been any lack of bonafides on the part of the petitioner or any failure to exhibit due diligence in prosecuting the remedy available to him in law. Facts and circumstances of these cases, as discussed earlier, do demonstrate sufficient cause and petitioner''s bona-fides which set the paradigm of judicial discretion, following the law laid down in Esha Bhattacharjee (supra), in favour of the petitioner. The impugned orders are, therefore, perverse and can not sustain the scrutiny of law. They deserve to be quashed and set aside.

18. In the circumstances, the Writ Petitions are allowed. The impugned orders are quashed and set aside. The applications filed for condonation of delay are allowed. Civil Revision Applications be registered and dealt with in accordance with law.

19. Rule is made absolute in these terms. No costs.