

Siddesh Salgaonkar vs Goa Coastal Zone Management Authority on 30 September, 2022

Item No.3

(Pune Bench)

BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE

(By Video Conferencing)
I.A. NO. 154 OF 2022
IN
APPEAL NO.45 OF 2022 (WZ)

Siddesh Salgaonkar

.....Applicant

Versus

Goa Coastal Zone Management Authority (GCZMA)
and others

....Respondent(s)

Date of hearing: 30.09.2022

CORAM: HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER

Applicant : Mr. Pankaj Pai Vernekar, Advocate

Respondent : --

ORDER

1. This application has been moved for condoning the delay of 18 days in filing the appeal against the order dated 11.08.2022 passed by respondent No.1/GCZMA, directing the Deputy Collector and S.D.O. , Bardez to carry the demolition of additional construction of platform of Ganapati visarjan, leaving area of 10 x 20 sq.mtrs as approved by the GCZMA, within a period of 45 days.

2. The learned counsel for the applicant has argued that the purpose of filing appeal would be frustrated if the injunction order is not issued against the respondents because if the demolition is allowed to be carried, the applicant's house would be flooded. The learned counsel has placed reliance in this regard upon the judgment of the Hon'ble High Court of Bombay in Shaikh Ibrahim Janmohammad Vs. Tekchand Fakirchand Rathod and others; 1986 SCC OnLine Bom 245 wherein he has placed reliance on paragraph 11, which is quoted hereinbelow:-

"A person against whom a decree is passed ex parte can prefer an appeal against that decree. In case he is not able to prefer an appeal within the specified period of

limitation, he can prefer an appeal even beyond the period of limitation and can seek condonation of delay in preferring the appeal. He can claim for condonation of delay under section 5 of the Limitation Act, 1963. It is true that in view of the Bombay amendment and also as per the Central amendment to the Code of Civil Procedure the appeal cannot be admitted without first deciding the application for condonation of delay in preferring the appeal. If the Court finds that there is sufficient cause for the delay in preferring the appeal, the Court can condone the delay and hear the appellant under rule 11 of Order XLI Civil Procedure Code, and if the Court does not dismiss the appeal under that rule, the Court has to admit it and issue notices to the Court below and the respondent and hear the appeal on merits. It may be that for hearing and deciding an application for condonation of delay the Court may require some time and in case stay of execution proceedings is not granted and the decree is executed, the very purpose of preferring the appeal is likely to be defeated, and where there is a decree for eviction of a tenant, the tenant would be put to a great hardship which cannot be compensated in case he succeeds in his application for condonation of delay and also in the appeal. Therefore, it can never be construed that the appellate Court is prevented from granting stay of execution of the decree pending hearing of the application for condonation of delay. In this view of the matter, the revision application is allowed. The order of the trial Court dated 7th November 1985 vacating the ad interim stay granted by him on 9th October 1985 is set aside and the execution of the decree is stayed till the decision of the application for condonation of delay. Further hearing of the matter shall be expedited. In the circumstances of the present case there shall be no order as to costs of this application."

3. The learned counsel for the applicant has also placed reliance on the judgment of the Hon'ble High Court of Bombay, Aurangabad Bench in Bhagwan s/o Ganpatrao Godsay Vs. Kachrual s/o Bastimal Samdariya with other connected matters; 1987(2) Bom.C.R.153, placing reliance on paragraph 33 thereof, which is quoted hereinbelow:-

"Situation may arise and it does arise that delay is caused in filing appeal for the reason beyond the control of the party, say for instance on account of wrong calculation of time by the office, because of the mistake of the advocate and the delay may also be for a very short time say for one or two days but notices are necessary and if it is held that unless the delay application is decided, no stay can be granted, the party who prefers an appeal would suffer irreparable loss and unmeasurable hardship. It is in this context, we have to interpret the above Supreme Court judgment in The State of Panjab and another v. Shamlal Murari and another. However, law is meant to do substantial justice and we should not stick to the technicalities and niceties of words. If there is prima facie good reason for condonation of delay in filing the appeal and stay is not granted, then we fear that the very purpose of the appeal would be frustrated and what is demanded in the appeal is deemed to have been denied to the party even before the admission of the appeal. The other party may take possession in haste and hurry if stay is not granted."

4. By citing the aforesaid rulings, the learned counsel for the applicant has argued that even if the application for condonation of delay is allowed, as the notices are required to be issued while considering the said application, the Tribunal may pass injunction order against the respondent/s in the interest of justice because the very purpose of filing appeal would be frustrated.

5. There is no quarrel with the relevant law placed before us, but we have to have strong case made out against the respondents and in the present case, the main emphasis that has been laid down by the learned counsel for the applicant is that the demolition of the property which is being allowed to have been carried out is not a construction belonging to the applicant. Rather it is being said to be an old construction existing pre-1991 which gives protection to the house of the applicant against flood and erosion. If that would be allowed, he would be adversely affected.

6. The learned counsel for the applicant has also submitted that the notice of hearing was not given to the applicant before passing the impugned order.

7. We appreciate the argument and the reliance placed on the judgments cited supra and the subsequent events shown by him, including the orders passed by the High Court and this Tribunal. We are of the view that the applicant has no direct connection with the property which is directed to be demolished and it would not be possible to pass injunction order against the respondents without hearing them.

8. Issue notice to all respondents returnable within four weeks.

9. Applicant is directed to provide copy of the application and relevant documents to the respondents within a week.

10. Respondents are directed to submit their reply-affidavits before 17.11.2022.

11. Applicant is also directed to take necessary steps for service upon the respondents by both ways and also through available email.

12. Put up the matter on 17.11.2022.

Dinesh Kumar Singh, JM Dr. Vijay Kulkarni, EM September 30, 2022 npj