

IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO. 42 OF 2003.

Mr. Sudesh Uttam Gadekar,  
r/o St. Anthony Preir Waddo,  
Anjuna, Goa. ... Petitioner.

Versus

Shri Devanand Ankush Kerkar,  
r/o Soranta Wado, Anjuna, Goa. ... Respondent.

Mr. Shivan Dessai, Advocate for the Petitioner.

Mr. J.P. Mulgaonkar, Advocate for the Respondent.

Coram: P.V. HARDAS, J.

Date: 30th January 2003.

ORAL JUDGMENT.

Rule. Rule made returnable forthwith, by  
consent of parties.

2. This petition has been filed by the  
petitioner, who is the original defendant in Regular  
Civil Suit No. 190/99/D pending on the file of the  
Civil Judge, Senior Division, Mapusa, challenging the  
Order, dated 14th November 2002, passed by the learned  
trial Court, dismissing the application for condonation  
of delay filed by the present petitioner for setting  
aside the exparte Order.

3. The facts in brief necessary for the decision  
of the Writ Petition are stated hereunder:-

The respondent/original plaintiff filed a suit

against the petitioner/original defendant, bearing Regular Civil Suit No. 190/99/D, in the Court of Civil Judge, Junior Division, Mapusa. The suit was fixed for filing written statement on 9th January 2001 and, thereafter, on 7th April 2001. On 7th April 2001, the present petitioner/defendant could not attend the hearing and also the counsel for the petitioner had informed the petitioner regarding his inability to attend the same. It appears that an exparte Order dated 7th April 2001 came to be passed against the present petitioner and he learnt about the same on 16th June 2001. Thereafter, an application for setting aside the exparte Order came to be filed on 29th June 2001 and subsequently an application for condonation of delay. Admittedly, the application for condonation of delay is beyond the period of limitation by 44 days.

4. It is true that in the application for condonation of delay, which is extremely cryptic, the petitioner has not explained about the delay from 16th to 29th June 2001. The stand of the petitioner in the said application primarily was that there was no delay as he had learnt about the said Order on 16th June 2001. The learned trial Court, therefore, dismissed the said application on this ground that there was no explanation for the delay from 16th June 2001 to 12th September 2001. The application for condonation of delay was

actually filed on 12th September 2001 whereas the application for setting aside the exparte Order was filed on 29th June 2001. The learned trial Court is, therefore, not correct in saying that there was no explanation given by the petitioner for the delay from 16th June to 12th September 2001. In fact, there is no explanation for the delay between 16th June to 29th June 2001. In the petition, which is filed, it is stated that he had instructed his lawyer for drafting the application for setting aside the exparte Order after learning about the same on 16th April 2002.

5. In an application for condonation of delay, the party is certainly enjoined to explain the delay satisfactorily. Such cryptic applications normally should not be entertained by the Courts. However, the facts peculiar to this case are that the petitioner/defendant has not explained the delay from 16th June to 29th June 2001. Apparently, the stand in the said application was that there was no delay and the same was being filed under the instructions of the Court. In the petition, however, it was stated that he had instructed his lawyer to draft the application and, thus, there is some semblance of an explanation to be found in the petition. When the delay is of only few days, as in this case there is no explanation for 13 days, according to me, the delay has to be condoned, as

the application for setting aside the ex parte Order is yet to be decided. Mr. Mulgaonkar, the learned counsel appearing on behalf of the respondent/plaintiff has no serious objection, if the application for condonation of delay is allowed subject to payment of costs. Therefore, in the peculiar facts of this case, though the delay has not been properly explained, I am inclined to condone the delay. However, the petitioner shall pay to the respondent/plaintiff costs of Rs. 2,000/-, which shall be a condition precedent for the condonation of delay. Costs be paid/deposited in the trial Court.

6. In the aforesaid circumstances, therefore, rule is made absolute and the Order of the learned trial Court impugned in the present petition is quashed and set aside. The delay in filing the application for setting aside the ex parte Order stands condoned and the application for setting aside the ex parte Order is restored to file. The learned trial Court shall decide the application for setting aside the ex parte Order as per law. The petitioner is directed to pay costs of Rs. 2,000/- to the respondent.

(P.V. HARDAS)  
JUDGE.

ed's.