

IN THE HIGH COURT OF BOMBAY AT GOA

LD-VC-CW- 276-2020

Roque Estelito Almeida Petitioner

V e r s u s

Joao Camilo Almeida and ors. Respondents

Adv. Mr. V. Rodrigues for the Petitioner.

Adv. Mr. Abhay Nachinolkar for the Respondents.

CORAM: DAMA SESHADRI NAIDU, J.**DATE: 6th January 2021.****ORDER:**

The petitioner complains that the first respondent carried an appeal to the Administrative Tribunal with a delay and had that delay condoned. But that was without proper notice to the petitioner. After that, too, the Tribunal allowed the very appeal without further information.

2. In this context, Shri Vivek Rodrigues, the learned counsel for the petitioner, points out that the petitioner had been abroad when the first respondent filed the appeal. And the first respondent was aware of that fact. Despite that, initially, he tried to serve notice at the local address. Later, with his predictable failure to serve notice locally on a person abroad, the first respondent took out substituted service. Therefore, Shri Rodrigues contends that the judgment impugned is virtually ex parte and affects natural justice principles.

3. Heard Shri Rodrigues, the learned counsel for the petitioner, and Shri Nachinolkar, the learned counsel for the first respondent.

4. Indeed, the Appellate Court disposed of the appeal with notice to the petitioner through substituted service at both the stages: during the condonation of delay and eventually on the merits, too. Order V of the Civil Procedure Code provides an elaborate mechanism on how to serve the summonses on the parties in the litigation, either before the Trial Court or at the appellate stage.

5. In this case, the petitioner's grievance seems that he had no notice in the appeal. If that is the case, he ought to go before the Tribunal. There, he may apply for the recall of the judgment and decree, for a fresh hearing of the delay condonation petitioner in his presence. After that, the Appellate Court may, if necessary, hear the appeal, too, on the merits.

6. When I pointed out this course of action, Shri Rodrigues sought the Court's leave to withdraw the Writ Petition and approach the Tribunal. Nevertheless, he wants this Court to preserve all the pleas available for the petitioner before the Tribunal. That goes without saying, though.

Under these circumstances, without adverting to the merits, I close this Writ Petition as withdrawn. As a result, the petitioner may approach the Tribunal and advance all his pleas.

DAMA SESHADRI NAIDU, J.

AP/-