

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 69 OF 2015

MR. THOMAS AMBORSE BRAGANZA AND
ANR.,

... Petitioners

Versus

MR. IGNATIUS BRAGANZA.

... Respondent

Shri R. G. Ramani, Advocate for the Petitioners.

Coram:- C. V. BHADANG, J.

Date:- 11th September, 2015

ORAL ORDER :

Heard Shri R.G. Ramani, learned Counsel appearing for the petitioners for sometime.

2. By this petition, the petitioners, who are the defendants no.1 & 2 are challenging the order dated 14/09/2014 (Exhibit D-70) passed by the learned Adhoc Senior Civil Judge, Mapusa in Special Civil Suit No.5/2003/A. By the impugned order, the application Exhibit D-70 filed by the petitioners for amendment of the written statement has been rejected.

3. The brief facts are that the plaintiff filed the suit in the year 2002 in which the petitioners filed their written statement on 10/04/2003 raising a counter claim. The petitioners also, inter alia, raised the contention that the suit was bad for non-joinder of necessary party

namely the wife of the respondent-plaintiff. It appears that the issues were framed on 27/06/2003 in which one of the issue was whether the suit is bad for non-joinder of the necessary party. Subsequently, on 7/06/2011, the respondent-plaintiff filed an application for joinder of his wife presumably to obviate the defence about non-joinder of the necessary party. The application was allowed on 4/05/2012 directing the wife of the plaintiff to be joined as defendant no.3. Thereafter, on 29/10/2013, the petitioner filed an application for amendment of the written statement. The only amendment sought is that the suit is barred by limitation as the necessary party is joined after the period of limitation. That application was opposed on behalf of the respondent.

4. The learned Trial Court found that the petitioners has not explained as to why the amendment was not sought immediately after the defendant no.3 was joined as a party. The learned Trial Court has also found that there is no limitation period under Order 1 Rule 10 of the Civil Procedure Code under which the Court can direct addition/striking of parties at any stage of the suit. It was found that the plea that the suit is barred by limitation has no nexus to the joinder or non-joinder of the parties. As such, the proposed amendment was not necessary to decide the real controversy between the parties. Lastly, the learned Trial Court has found that under Section 3 of the Limitation Act the Court can look into and the plaintiff has to show that the suit is filed within a period of limitation.

In effect, it has been held that notwithstanding that any party raises the issue of limitation the Court is bound to look into the same and it is for the plaintiff to establish in order to succeed that the suit is filed within limitation. In that view of the matter the application came to be rejected.

5. It is submitted by Shri Ramani, the learned Counsel for the petitioners that the Trial Court had since deleted the issue about the suit being bad for non-joinder of necessary party after addition of defendant no.3. It is submitted that thus the petitioners ought to have been permitted to raise the issue of limitation. The learned Counsel has referred to the provision of Order 1 Rule 10(5) of the Civil Procedure Code.

6. I have considered the circumstances and the submissions made and I do not find that any case for interference in the impugned order is made out. The provisions of Order 1 Rule 10(5) of the Civil Procedure Code do not take the case of the petitioners any further. In fact, it provides that subject to the provisions of the Indian Limitation Act, the proceedings as against any person added as a defendant shall be deemed to have begun, on the service of the summons. It is not possible to envisage as to how this would help the petitioners, in assailing the impugned order. Apart from this, the learned Trial Court has observed and to my mind rightly so, that under Section 3 of the Limitation Act the Court is bound to look into the question of

limitation, even if the same is not raised. Thus, strictly speaking the said amendment may be superfluous. I do not find that any case for interference in the exercise of extra ordinary jurisdiction of this Court is made out. In the result, the Writ Petition is dismissed.

C. V. BHADANG, J.

NH