

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 80 OF 2014

JOAO ALBERTO NUNES AND ANR.,	... Petitioners
Versus	
LATE MR. FRANCISCO XAVIER NUNES (EXPIRED) AND 3 ORS.,	... Respondents

Mr. R. J. Pinto, Advocate for the petitioners.
None for the respondent.

Coram:- F. M. REIS, J.

Date:- 16th July, 2015

P.C.:

Heard Mr. R.J. Pinto, learned Counsel appearing for the petitioners.

2. The above petition challenges an order passed by the learned Civil Judge, Sr. Division, at Panaji in Special Civil Suit No.128/1999/B dated 25/04/2013, whereby an application for condonation of delay and to bring the LRs. of the deceased Plaintiff No.1 on record, came to be allowed.

3. The learned Counsel appearing for the petitioners has pointed out that on an earlier occasion, an application was filed by the respondents to bring the LRs of the deceased Plaintiff No.1 on record, which came to be dismissed, as such an application was time barred. The learned Counsel further submits that the respondents,

thereafter, filed a fresh application belatedly to bring the same LRs. on record, along with an application for condonation of delay, which came to be allowed by the impugned order. The learned Counsel further points out that as the first application was dismissed, the second application was barred by the principles of res judicata. The learned Counsel further submits that the respondents have not made out any sufficient cause to condone the delay of more than 500 and odd days in bringing the LRs. of plaintiff No.1 on record. The learned Counsel, as such, submits that the impugned order be quashed and set aside.

4. I have duly considered the submissions of the learned Counsel and I have also gone through the records. It is an admitted fact that the deceased Plaintiff No.1 was the husband of the plaintiff No.2 who was already on record. In such circumstances, there is no question of there being any abatement of the suit. It is well settled that moiety sharer of the couple is an intermeddler in the estate of the deceased spouse and, as such, an LR in terms of the Code of Civil Procedure. In such circumstances, the contention of the learned Counsel appearing for the petitioners that the suit itself has abated on account of death of the plaintiff No.1 cannot be accepted.

5. As far as the contention of the learned Counsel for the petitioners that the subsequent application was barred by the principles of res judicata is concerned, I find that the said contention

cannot be accepted. It is not in dispute that the earlier order disposing of the application on the ground that an application for condonation of delay was not filed, has not been challenged before the superior Court. Such orders can also be challenged at the later stage. In such circumstances, the contention of the learned Counsel appearing for the petitioners that the second application is barred by the principles of res judicata cannot be accepted in view of the observations of this Court in the Judgment dated 14/10/2011 in Writ Petition No.453/2003, in the case of Smt. Nalini Naik Bocal and ors. vs. Jeronima Fernandes (since deceased) through LRs. and others. The learned Judge has passed the impugned order in the interest of justice and to advance the cause of justice. In such circumstances, it would not be appropriate for this Court to interfere in the impugned order in exercise of its jurisdiction under Article 227 of the Constitution.

The petition stands accordingly rejected.

F. M. REIS, J.

ssm.