

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 477 OF 2014

Mr. Ramchandra Mangesh Tamoskar,
Son of Mangesh Tamoskar,
Age 53 years, married,
Government servant,
Residing at House No: 221,
Coelhowado,
Penha da Franca,
Bardez, Goa.

....

Petitioner

Versus

1. Mr. Inacio Ligorio do Rosario Leitao
Also known as Ligorio Leitao Inacio,
Son of late Caetano Do Rosario Leitao,
Major of age,
Service,
2. Mrs. Alka Ligorio Leitao
Wife of Mr. Inacio Ligorio do Rosario Leitao
Major of age, Service,
Both residing at 104,(B)
Jayesh Smruti, Karve Road,
Dombivili (West), Tal. Kalyan,
Dist. Thane, Maharashtra.

Presently residing at Nilkanth Deep,
B/3, Ground Floor, Gopal Nagar No:1,
Gograswadi, Dombivali (East),
Mumbai 421 201.

3. Mr. Eleuterio Manuel Xavier Soares
Deceased,
and his wife;

4. Mrs. Maria Trereza Fonseca Soares,
Wife of late Eleuterio Manuel Xavier Soares,
Teacher, major of age,
Both residing at House No:203,
Vollovaddo, Penha de Franca,
Bardez, Goa.

.... Respondents.

Ms. V. Shetye, Advocate for the Petitioner.

Mr. Nuno J. Noronha, Advocate for Respondent no. 4

CORAM: N. M. JAMDAR, J.

DATE: 4TH FEBRUARY, 2015.

ORAL JUDGMENT:

Rule made returnable forthwith. Mr. Nuno Noronha, learned counsel for respondent no.4-original plaintiff waives service. Respondent no.3 has expired and is represented through Respondent no.4. Respondent nos.1 and

2 are the original defendants in the suit, who are not the contesting respondents for the purpose of this writ petition.

3. Ms. V. Shetye, learned counsel for the petitioner submits that the learned Civil Judge has confused between the applications filed by the petitioner and defendants no.1 and 2. A perusal of the impugned order shows that the submission is correct. An application was filed by defendants no.1 and 2 for taking the written statement on record with an application for condonation of delay and an application was filed by the petitioner for amendment of the written statement and counter claim along with production of documents, in view of the amendment carried out by the plaintiff. It appears from the perusal of the impugned order that the learned Judge has rejected the application of the petitioner on the grounds which are germane for application of defendants no.1 and 2. The impugned order will have to be set aside.

4. Mr. Noronha, the learned counsel for respondent no.4-original plaintiff states that instead of remanding the matter back to the trial court for reconsideration, which will entail further delay in the suit which is pending since the year 2007, the application of the petitioner may be considered by this Court. He accepts the position that there is a confusion regarding the impugned order. In view of this position, the writ petition deserves to be allowed and is accordingly allowed. Rule is made absolute in terms of prayer clause "A". The petitioner will take necessary steps within four weeks from today.

5. Considering the fact that respondent no.4, is of advanced age and that since the suit is pending from the year 2007, the learned civil Judge will give priority to the disposal of the suit and take up the suit for consideration if there are no other prior urgent time bound matters.

N. M. JAMDAR, J.

Ap/-