

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 393/2015**

(1) Romeu Oliveira,
son of Rosario Oliveira,
major of age, businessman,
resident of House No.29,
Ilha da Rachol, Rachol, Salcete, Goa.

(2) Joaquim Oliveira,
son of Rosario Oliveira,
major of age, businessman,
resident of House No.29,
Ilha da Rachol, Rachol, Salcete, Goa.

..... Petitioners.

Versus.

(1) Dr. Albin Paul Mendonca,
s/o. Peter Camilo Mendonca,
(since deceased) through his
legal representatives.

(1.a) Agnelo Savio Mendonca, s/o.
Dr. Albin P. Mendonca, major of age,
resident of Ryan's Run, East Apt.
2116 1330, Maple Shade,
New Jersey, 08052,
United States of America.

(1.b) Joel Mendonca,
s/o. Dr. Albin P. Mendonca,
major of age, r/o. 7720,
Penn Avenue South, Apt. 43,
Richfield, Minnesota, 55243,
United States of America.

(2) Mrs. Evalasia Mendonca,
major, r/o. G-5, Kailash Darshan,
Aquem, Alto, Margao, Goa.

..... Respondents.

Shri Ryan Menezes, Advocate for the petitioners.

Shri A. D. Bhobe, Advocate for respondents.

CORAM :- F.M. REIS, J.

Date : - 26th June, 2015.

ORAL JUDGMENT :

Heard Shri Ryan Menezes, learned Counsel appearing for the petitioners and Shri A. D. Bhobe, learned Counsel appearing for the respondents.

2. Rule. Heard forthwith, with the consent of the learned Counsel. Learned Counsel appearing for the respondents waives notice.

3. The above petition challenges an order dated 14th November, 2014 passed by the learned IInd Additional Civil Judge, Sr. Division at Margao in Regular Civil Suit No.42/2011/II, whereby the evidence of the petitioners came to be closed as they had already availed of three adjournments.

4. Shri Ryan Menezes, learned Counsel appearing for the petitioners has pointed out that the reason for seeking the adjournment is that the Advocate, who was representing the petitioners, was sick and, as such, could not appear before the Court. The learned Counsel further points out that on the earlier occasions adjournments were sought as the Advocate was sick and ultimately, a few days before the hearing he had to undergo a surgery. The learned Counsel as such, points out that the learned trial Judge was not justified to pass the impugned order and close the evidence of the petitioners, which would result in depriving the petitioners from establishing their case. The learned Counsel, in support of his submissions, has relied upon a Judgment of this Court reported in 2012 (6) ALL MR 647, in the case of *Agostinho Godinho vs. Mrs. Maria Eufrezita Paulina and ors..* Shri Menezes, learned Counsel appearing for the petitioners, upon instructions, states that the petitioners/plaintiffs will not seek any unnecessary adjournment during the course of the trial. The learned Counsel, as such, submits that the impugned order be set aside.

5. On the other hand, Shri A.D. Bhobe, learned Counsel appearing for the respondents has pointed out that the suit filed by the petitioners itself is a fraudulent exercise and being aware that the

petitioners have no case, the matter is being delayed by successive adjournments. The learned Counsel further points out that though it is contended by the petitioners that their Advocate was sick, nevertheless, the records reveal that the Advocate was in fact present on the said date. The learned Counsel further points out that in such circumstances, no discretion is to be exercised in favour of the petitioners.

6. I have considered the submissions of the learned Counsel and I have also gone through the record. On perusal of the impugned order, I find that the petitioners did not even choose to file an appropriate application, justifying the adjournment on the relevant date. This conduct of the petitioners itself would otherwise not entitle the petitioners for any discretion. But, however, taking note of the fact that the petitioners have stated on oath in their petition that their Advocate was sick and had to undergo a surgery which is not disputed, I find that in the interest of justice, an opportunity can be given to the petitioners to lead further evidence.

7. In view of the said uncontroverted facts as disclosed in the petition which are supported by an affidavit, I find that the

impugned order deserves to be quashed and set aside and the petitioners to be permitted to proceed with their evidence, subject to payment of costs of Rs. 5,000/-, to the respondents as condition precedent.

8. Shri Bhobe, learned Counsel appearing for the respondents has pointed out that the matter is now posted for cross examination of the respondents-defendants on 22nd July, 2015. In view of the order passed today, the petitioners shall file the affidavits of the witnesses on the said date of hearing, by supplying copies of such affidavits at least 48 hours in advance to the respondents.

9. Subject to the above, the impugned order dated 14th November, 2014 passed by the learned IInd Additional Civil Judge, Sr. Division at Margao in Regular Civil Suit No.42/2011/II, is quashed and set aside. The petitioners are permitted to record the evidence of two witnesses, subject to the petitioners paying costs of Rs.5,000/- as condition precedent to the respondents. Rule is made absolute in the above terms.

F.M. REIS, J.

ssm.