

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 568 OF 2014**

SHRI. ANIL CANDOLCAR ... Petitioner
Versus
SHRI. KISHOR ALIAS SANTOSH
VISHNU CANDOLCAR AND 3 ORS. ... Respondents

Mr. Sebastian Vales, Advocate for the Petitioner.
Mr. Rohit Bras De Sa, Advocate for the Respondents.

Coram:- M. S. SANKLECHA, J.

Date:- 18th March, 2015

ORAL ORDER :

This petition under Article 227 of the Constitution of India challenges orders dated 5/03/2014 and 26/08/2014 passed in Special Inventory Proceeding No.50/2005/A by the Civil Judge, Senior Division, Vasco da Gama and in appeal being Misc. Civil Appeal No.27/2014 by the District Judge-3 respectively. The impugned order dated 5/03/2014 in the Special Inventory Proceedings has concluded that respondent no.1 i.e. Kishor alias Santosh Vishnu Candolkar, son of Vishnu Sacaram Candolcar and Laxmi S. Candolkar is an heir to the properties of his deceased parents.

2. The grievance of the petitioner is that he was unable to attend the proceedings before the Special Inventory Court which resulted in

the order dated 5/03/2014 being passed without hearing him. In appeal his plea of sufficient cause for not being able to attend the proceeding before the Inventory Court so as to set aside the order in original was not accepted resulting in dismissal of appeal by order dated 26/08/2014.

3. Sometime in the year 2005, one Laxmi S. Candolkar the mother of the petitioner and respondent no.1 had commenced Inventory Proceedings in her capacity as Administrator under Articles 1369 & 2067 of the Family Laws of Goa, Daman & Diu. These proceedings were initiated on account of death of her husband for the purposes of distribution of the estate of her late husband amongst his legal heirs i.e. the petitioner, respondent no.1 and respondent no.3 (her daughter) being her children. (It may be pointed out that the petitioner had objected to his mother declaring respondent no.1 as her son). During the pendency of the inventory proceedings Mrs. Laxmi S. Candolkar passed away in the year 2008. On demise of the mother in 2008, the petitioner in his capacity as the eldest son of his mother sought to continue the Inventory Proceedings as the Administrator in terms of Article 2067 of the Family Law of Goa, Daman & Diu. In the meantime some orders passed by the Inventory Court were also

subject matter of challenge by way of Writ Petition in this Court being Writ Petition No.18/2013 and this Court by order dated 18/02/2013 had after noting the fact that the Inventory Proceedings had commenced in the year 2005 directed the Inventory Court to dispose of the proceedings as expeditiously as possible.

4. The petitioner had filed an application before the District Court seeking a transfer of the Inventory Proceedings from the Court in which they were originally filed namely 'B' Court at Vasco to 'A' Court at Vasco. The application made by the petitioner was allowed by an order dated 6/01/2014 of the District Court which directed the parties to appear before the newly assigned Inventory Court i.e. Court 'A' at Vasco on 10/01/2014.

5. On 10/01/2014 when the matter was called out by the Inventory Court neither the petitioner nor his advocate was present. In these circumstances, the Inventory Court adjourned the proceedings to 15/01/2014. At that time also neither the petitioner nor his advocate was present. The evidence was recorded by the Inventory Court on 15/01/2014, 31/01/2014 and 12/02/2014. On none of the dates was the petitioner or his advocate present in Court. On 3/03/2014

arguments were heard by the Inventory Court. On that date also neither petitioner nor his advocate was present. The Inventory Court after examining the evidence on record came to the conclusion in its order dated 5/03/2014 that the respondent no.1 was also the legal heir to the estate of his parents i.e. late Mr. Vishnu Candolcar and late Mrs. Laxmi S. Candolkar.

6. Being aggrieved by the order dated 5/03/2014, the petitioner preferred an appeal to the District Judge. The petitioner sought to set aside the order dated 5/03/2014 passed by the Inventory Court essentially on the ground that it had been passed in breach of natural justice inasmuch as the petitioner was not heard before the passing of the order dated 5/03/2014. This was as the petitioner was unable to attend the Inventory Court either by himself or through his advocate for the period from 10/01/2014 to 5/03/2014 when the order of the Inventory Court was passed. The explanation offered by the petitioner in his affidavit dated 19/03/2014 is inter alia as under:

9. I say that as a result of which I was totally sick for the period from 8th January 2014 till 31st January 2014 and therefore could not contact my lawyer.

10. I say that in the first/second week of February 2014, after being alright, I visited my Advocate Office at Porvorim/Panaji but

however did not meet me as he was not available in the Office but however met his staff. I tried calling my lawyer but however he was not responding.

11. I say that on 23rd February 2014, I met my lawyer at his office in Porvorim in the evening hours and I inquired about the status of my case. I say that to my shock and surprise he informed me that I had issued legal notice to me since I did not communicate him after 10th January 2014 and neither I informed me about the status of the hearing on 10th January 2014. I explained to him that though I assured him I would go for the case on 10th January 2014 but however I felt seriously ill on 8th January 2014 in the evening hours and therefore could not remain present for the case. I further informed him that I continued being sick till 31st January 2014. I showed him my prescription and medical records. I say that thereafter my Advocate believed me.

12. I say that he also produced before me the legal notice sent to me under registered A/D. I say that I did not receive any notice and accordingly I informed the same to my lawyer. I say that I further informed my lawyer that he had informed me to attend the hearing only on 10th January 2011 and thereafter I was not informed that I had to attend the hearing. I say that I informed my lawyer that I was under bonafide belief that my lawyer would thereafter be attending the hearings in the above case as he has been attending my cases at Mapusa Court.

13. I say that on 23rd February 2014 I requested my lawyer to attend the Court and find out the status of my matter but my lawyer informed me that it is very difficult for him to attend the Court prior to 5th March 2014 and it is only on 5th March 2014, he could attend the Court at Vasco since he was having other

criminal matters in C Court bearing no.119/OA/202/C and 126/OA/2012/C and accordingly noted in his diary the date as 5th March 2014 in the afternoon session; My lawyer instructed me to find out the status of the matter in the meantime if I desired, to which I replied saying that I am a layman and will not be in a position to get the status and that he should do it when he comes to Vasco.

7. It is also submitted before me that as stated in the affidavit the petitioner was under a bonafide impression that proceedings would take some time. This was for the reason that the application of the respondent for consolidation of two inquiries one with regard to deposit of rent and the other being of the heir-ship of respondent no.1 will have to be first disposed of by the Inventory Court.

8. The impugned order dated 26/08/2014 considered the petitioner's submissions and came to the conclusion that the reasons given by the petitioner for not attending the Court would not amount to sufficient cause for the quashing of the order dated 5/03/2014. In particular the order records that petitioner was directed to be present by the District Court in the Inventory Court 'A' on 10/01/2014 while transferring the matter at the instance of the petitioner. Yet neither the petitioner nor his advocate was present on 10/01/2014. The

impugned order dated 26/08/2014 further records that the advocate appearing for the petitioner had sent a notice of withdrawal of his Vakalatnama to the petitioner on 23/01/2014. Although the petitioner claims not to have received the same nor has the advocate received acknowledgment of the due receipt of his notice by the petitioner, the order records that the respondent had brought on record a postal report indicating the service of the withdrawal of notice on the petitioner. It was in the aforesaid facts that the order dated 26/08/2014 came to the conclusion that the petitioner had failed to make out a sufficient case for not being able to attend the proceedings before the Inventory Court from 10/01/2014 till 5/03/2014 when the Inventory Court passed the impugned order.

9. It is contended on behalf of the petitioner that there has been a breach of natural justice and therefore the appeal Court ought to have set aside the order dated 5/03/2014 of the Trial Court. There can be no breach of natural justice, if inspite of opportunity, the party concerned cares not to avail of the same. The District Court had while transferring the Inventory Proceedings from Court 'B' to Court 'A' at Vasco at the petitioner's instance in its order dated 6/10/2014 had directed the parties to remain present before the Inventory Court

on 10/01/2014. On the scheduled date i.e. on 10/01/2014 neither the petitioner nor his advocate were present. Therefore the proceedings before the Inventory Court were adjourned to 15/01/2014. Thereafter, evidence was recorded on 15/01/2014, 31/01/2014 and 12/02/2014 and on none of these dates neither the petitioner nor his advocate were present. Arguments in respect of Inventory Proceedings were heard by the Inventory Court on 3/03/2014. At that time also neither the petitioner nor his advocate was present. The explanation offered for absence by the petitioner in his affidavit does not inspire confidence. The affidavit states that the petitioner approached his advocate in the first or second week of February 2014. No particular date has been given of his approaching the advocate. Besides, it only states that on 23/02/2014 petitioner met his advocate. There appears to have been no effort by the petitioner to meet his advocate personally between first/second week of February 2014 up to 23/02/2014. Besides, once the petitioner is aware that the proceedings have been transferred to the Inventory Court 'B' at his instance and is scheduled for hearing on 10/01/2014 it would follow that he ought to have remained present on that date either by himself or through his advocate. In any case, if one accepts that due to ill health he was unable to attend on the above dates, any reasonable

person would have again approached the Inventory Court to find out the fate of his application which was scheduled on 10/01/2014. No such attempt was made.

10. If the contention of the petitioner is to be accepted then every order which is passed by the authority in the absence of one of the parties would be suspect as it will be open to party not attending the hearing to challenge the same, if adverse to it, by giving reasons to explain his absence. This would lead to injustice not only because of uncertainty but would encourage dishonest litigants to take chance by not attending the hearing and if the result is adverse to have the same set aside on the ground that he was not present at the hearing in the first round.

11. So far as petitioners' bonafide belief that inquiry in respect of rent and respondent no.1's heir-ship would be clubbed together and thus they did not expect the matter to proceed further with the Inventory Court. One is unable to understand how could there be any such bonafide belief if the application for consolidation of the two inquiries was not listed for hearing. In any case, that cannot be an explanation for not attending the Court for a period of almost three

months. Moreover, as held by the order dated 26/08/2014 the application for clubbing was made by respondent no.1 and in case the same is not pressed by the respondent no.1 no occasion to decide consolidation application by the Inventory Judge can arise.

12. Keeping in mind that the Inventory Proceedings were of the year 2005 and the petitioner was aware of the inventory Proceedings commencing before the inventory Court on 10/01/2014, the reasons given by the petitioner for his absence till such time as the order is pronounced on 5/03/2014 does not inspire confidence. No fault in the judicial making process can be found either in the order dated 5/03/2014 of the Inventory Court or the order dated 26/08/2014 of the appeal Court. The satisfaction of good/sufficient reasons has to be that of the appeal Court. In this case the non-satisfaction of sufficient cause by the Court is not shown to be perverse.

13. It is to be borne in mind that the present petition has been filed under Article 227 of the Constitution of India. So far as the order dated 5/03/2014 is concerned, as none appeared on behalf of the petitioner during the Inventory Proceedings inspite of notice that the matter was fixed on 10/01/2014 no fault can be found with its order

as it was passed after examination of the evidence placed before it. So far as the order of the appeal Court is concerned on the basis of the material placed before it by the petitioner, it was not satisfied with the explanation offered by the petitioner for his absence as amounting to sufficient reasons which would warrant/justify quashing the order dated 5/03/2014. The refusal to exercise discretion by the appeal Court on the basis of the material placed before it was a reasonable exercise of its powers. In supervisory jurisdiction under Article 227 of the Constitution it is not open to convert the same into appellate jurisdiction, as sought to be done by the petitioner.

14. In view of the above, I see no reason to interfere with the impugned orders dated 5/03/2014 and 26/04/2014. Petition is dismissed. No order as to costs.

M. S. SANKLECHA, J.

NH/-