

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 667 OF 2014

MR. GURUDAS KASHINATH NAIK. ... Petitioner
Versus
MR. NARAYANRAO PRATAPRAO RANE. ... Respondent

Ms. Smita S. Gawas, Advocate for the petitioner.

Coram:- M. S. SANKLECHA, J.

Date:- 8th April, 2015

ORAL ORDER :

This petition under Article 227 of the Constitution of India assails the order dated 21 June, 2014, passed in appeal by the Ad-hoc District Judge, Panaji (hereinafter referred to as 'Appeal Court'). By the impugned order dated 21 June, 2014, the appeal was dismissed as not maintainable.

2. The Civil Judge, Junior Division (hereinafter referred to as 'Trial Court') by an order dated 8 December, 2011 dismissed the suit filed by the petitioner for non-prosecution. The petitioner thereafter moved an application before the Trial court, for recall of the order dated 8 December, 2011 and restoration of the suit. The Trial Court by an order dated 23 May, 2012, dismissed the application for restoration filed by the petitioner.

3. The order dated 23 May, 2012 passed by the Trial Court dismissing the application for restoration is an appellable order under

Order 43 Rule 1(c) of the Civil Procedure Code. The impugned order rejecting the appeal was in respect of the order dated 8 December, 2011. In view of the fact that the petitioner had already moved an application for restoration of suit, which was dismissed by an order dated 23 May, 2012 and the same is an appellable order, the impugned order dismissed the appeal against the order dated 8 December, 2011. The petitioner has not been able to point out any flaw in the impugned order dismissing the appeal from the order dated 8 December, 2011.

4. However, Ms. Gawas, learned counsel for the petitioner points out that they had in fact prepared an appeal against the order dated 23 May, 2012, of the Trial Court rejecting the petitioner's application for restoration. However, the Advocate then appearing for the petitioner was informed by the clerk at the District Court that, the appeal should be filed against the order dated 8 December, 2011 by which the suit was dismissed and not against the order dated 23 May, 2012 rejecting an application for restoration of the suit. In that view of the matter, the petitioner did not file the appeal against the order dated 23 May, 2012 but filed an appeal against the order dated 8 December, 2011. In support of the above, the affidavit of the Advocate dated 10 March, 2015 who was appearing for the petitioner has been filed on 10 March, 2015 in this Court. Ms. Gawas, learned counsel for the petitioner seeks to withdraw this petition with liberty to challenge the order dated 23 May, 2012 in appeal. It is noted that it was only on

account of the Advocate's mistake that the appeal was filed against the order dated 8 December, 2011 and not against the order dated 23 May, 2012. In case, the petitioner does file an appeal within 15 days from today, the Appeal Court will consider the affidavit dated 10 March, 2015 and the time spent in prosecuting the appeal against order dated 8 December, 2011 and the present petition for the purposes of condonation of delay in entertaining the petitioner's appeal against order dated 23 May, 2012 of the Appeal Court.

5. With the above observations, the present petition is dismissed, as withdrawn.

M. S. SANKLECHA, J.

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