

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 102 OF 2014

1. George Peter Mendes,
2. Filomena Mendes,
Both of full age,
resident of H. No. 671,
Atafondem, Moira,
Bardez-Goa 403 514. Appellants

Versus

1. Robert Mendes (now deceased),
through his legal representatives:
 - 1.a. Smt. Maria Mendes (Respondent No. 2),
major, and widow of Robert Mendes
 - 1.b. John Mendes, son of Robert Mendes,
major, aged about 32 years
 - 1.c. Joslin Colaco, aged about 30 years,
major and her husband
 - 1.d. Keegan Colaco, aged about 32, major,
Both residing, House No. now known,
Atafondem, Moira, Bardez-403 514.
2. Maria Mendes, full age,
Residing at, House No. not known,
Atafondem, Moira, Bardez. Respondents

Shri M.B. Costa, Senior Advocate with Ms. Karishma Betquecar, Advocate for the Appellants.

Shri Ashwin D. Bhole, Advocate for the Respondents.

CORAM : C.V. BHADANG, J.

DATED : 24th AUGUST, 2015

ORAL JUDGMENT :

Shri Bhobe, the learned Counsel waives service for the respondents.

2. Heard. Admit on the following substantial question of law:

Whether the first Appellate Court was justified in deciding the matter, without hearing oral arguments and on the basis of written arguments, in the facts and circumstances of the case ?

3. Heard finally with consent.

4. The brief facts are that the appellants, who are the plaintiffs had filed Regular Civil Suit No. 7/2005/D/F, for possession of a shop. That suit was dismissed by the trial Court by judgment and order dated 31.08.2012. This was

challenged by the appellants in Regular Civil Appeal No. 145/2012, before the learned Adhoc District Judge-1 (Fast Track Court), North Goa, Panaji. It appears that the appellants had filed an application (Exhibit-9), under Order 41 Rule 27 of the Code of Civil Procedure (C.P.C., for short), for production of certain documents at the appellate stage. That application was filed on 05.10.2013. The first Appellate Court took up that application, at the time of final disposal of the appeal. The learned District Judge dismissed the said application, as also the appeal, by impugned judgment and decree dated 19.07.2014. That is how the appellants are before this Court.

5. It is submitted by Shri Costa, the learned Senior Counsel for the appellants that the appellants had filed written arguments (Exhibit D-10) on 16.11.2013, while the respondents had filed written arguments (Exhibit D-14) on 03.06.2014. The appeal was fixed for clarification, if any/judgment on 19.07.2014. It is submitted that on that day, without hearing oral arguments, the learned District Judge proceeded to dismiss the appeal. It is submitted that

the appeal could not have been dismissed, without granting opportunity of oral hearing particularly, when on behalf of the appellants, a specific request was made for grant of opportunity of oral hearing. It is submitted that the appeal will have to be remanded to the first Appellate Court for deciding the matter in accordance with law.

6. On the contrary, it is submitted by Shri Bhobe, the learned Counsel for the respondents that the parties had chosen to file written arguments on record. It is submitted that the written arguments also included the submissions, as regards application under Order 41 Rule 27 of C.P.C. It is submitted that the order sheet dated 03.06.2014 would show that the appeal was fixed for clarification, if any/judgment and thus, the appellants were aware that the appeal was fixed for judgment and as such, the appellants cannot say that no opportunity of oral hearing was granted. It is submitted that the Appellate Court has considered all the issues on merits and even otherwise, the impugned judgment does not call for interference on merits. He therefore, submitted that the appeal be dismissed.

7. I have considered the rival circumstances and the submissions made. The provisions of Order 41 Rule 30 of C.P.C. would make it clear that the Appellate Court after hearing the parties or their Pleaders, may decide the appeal. Thus, Order 41 Rule 30 of C.P.C. contemplates an opportunity of oral hearing to the parties before the appeal can be decided. There may be cases where parties could file written arguments and may not insist for oral hearing. However, where the parties so insist, it will be necessary, for the Appellate Court to grant opportunity of oral hearing.

8. The learned Senior Counsel for the appellants has placed reliance on a Constitution Bench decision of the Hon'ble Supreme Court, in the case of **P.N. Eswara Iyer and Others Vs. Registrar, Supreme Court of India**, reported in **(1980) 4 SCC 680**, in order to submit that the opportunity of oral hearing is of paramount significance. The learned Senior Counsel has placed reliance on para 14 of the said judgment.

9. On the contrary on behalf of the respondents, reliance is placed on the decision of the Hon'ble Supreme Court, in the case of **Rasiklal Manikchand Dhariwal and Another Vs. M.S.S. Food Products**, reported in **(2012) 2 SCC 196**. The case of **Rasiklal Manikchand Dhariwal** (supra), involved a situation where the appellants-defendants were ex-parte, in the suit. The learned Judge who had heard the suit, had fixed it for pronouncement and it so happened, that the said Judge subsequently, got transferred and thereafter, the appellants-defendants had sought for opportunity for cross examining the respondent-plaintiff and lead oral arguments. In these circumstances, it was held that the subsequent Judge (who without hearing, posted the matter for pronouncement of judgment), was not required to give further opportunity of hearing to the appellants-defendants. The case is clearly distinguishable on facts.

10. Coming to the present case, the order sheet dated 03.06.2014 would clearly show that the learned Appellate Court had fixed the matter for clarification, if any/judgment. According to the appellants, a specific request for oral hearing

was made. Thus, it was obligatory on the part of the learned District Judge to grant such opportunity, which is a valuable opportunity to the parties. In that view of the matter, the point is answered in the negative.

11. Consequently, the following order is passed:

(a) The appeal is allowed.

(b) The impugned judgment and decree dated 19.07.2014, passed by the learned Adhoc District Judge-1 (Fast Track Court), North Goa, Panaji, is hereby set aside.

(c) Regular Civil Appeal No. 145/2012 is restored to the file of the learned Adhoc District Judge-1 (Fast Track Court), North Goa, Panaji, for disposal in accordance with law, after giving opportunity of hearing to the parties.

(d) In the circumstances, there shall be no order as to costs.

C. V. BHADANG,J

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