

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 147 OF 2015

Mrs. Maria Augusta Fernandes e
Anes, major, housewife, resident
of House No. 36, Near Lawande
Electricals, Luis de Menezes Road, Petitioner
Panaji-Goa.

Versus

1. Mr. Damaciano Pereira, major,
age 53 years, businessman,
2. Mrs. Sandra Pereira, major,
age 46 years, wife of Mr.
Damaciano Pereira.

Both residents of House No.
86/1, Sancoale, P.O.
Cortalim, Goa. Respondents

Mr. Rohit Bras de Sa, Advocate for the Petitioner.

CORAM:- C. V. BHADANG, J.

DATE:- 15th JUNE, 2016

ORAL JUDGMENT:

Rule. Rule made returnable forthwith.

2. Heard the learned Counsel for the petitioner.

On 16.07.2015, a notice for final disposal was issued to

the respondents. However, none appears for the respondents, though served. As such, the petition is taken up for final disposal and is being disposed of accordingly.

3. The petitioner/defendant had filed an application (Exhibit-D/86) for issuing summons to Mr. Murlidhar V. Salgaonkar, who was the Secretary of Village Panchayat of Neura and who had signed the panchanama dated 06.10.2012 (Exhibit-71) and letter dated 06.11.2012 (Exhibit-65). According to the petitioner said Murlidhar is transferred, from the said Panchayat and his present posting was not known. In such circumstances, it was prayed that summons be issued to said Murlidhar through the Block Development Officer, Tiswadi Taluka, Panaji.

4. The application was opposed on behalf of the respondents/plaintiffs. It was contended that the application was moved only to delay the suit.

5. The learned trial Court by the impugned order dated 09.01.2015 has dismissed the said application (Exhibit-D/86), inter-alia on the ground that under Order 16 Rule 1 of C.P.C., the parties are required to file the list of witnesses, whom they wish to examine, within 15 days of settlement of the issues. The learned trial Court has noticed Order 16 Rule 1(3) of C.P.C. to find that, the Court can permit the party to call any other witness (not appearing in the list of witnesses), if, such party shows sufficient cause for omission to mention the name of such witness in the list of witnesses. In paragraph 7 of the impugned order, the learned trial Court has found that the name of Murlidhar Salgaonkar is not shown in the list of witnesses and no cause is shown as to why his name was not shown in the list of witnesses.

6. As noticed earlier, in the application (Exhibit-D/86), the petitioner has stated that since said Murlidhar Salgaonkar was transferred, his present posting was not known. In either case, if the examination of the witness is found to be necessary,

merely because the name of the said witness does not appear in the list of witnesses, would not preclude the Court from permitting the examination of the said witness.

7. In such circumstances, the following order is passed:

O R D E R

(a) The petition is allowed.

(b) The impugned order dated 09.01.2015 is set aside.

(c) The application Exhibit-D/86 is allowed as prayed.

(d) Rule is made absolute in the aforesaid terms, with no order as to costs.

C.V. BHADANG, J.

EV