

IN THE HIGH COURT OF BOMBAY AT GOA
CIVIL REVISION APPLICATION NO. 27 OF 2015

Shri Peter Agnelo Danney Estiberio,
s/o Mr. Mariano Alexio Esteberio,
aged 34 years, service, r/o House
No. 547, Sulabhat, Agaciam, Goa.
Through his Power of Attorney, Mrs.
Christalina Gonsalves e Estebeiro,
d/o late Shri Minguel Gonsalves,
aged 63 years, married, resident of
H. No. 547, Sulabhat, Agacaim, Goa. Applicant/
Petitioner

Versus

Mrs. Reena Colaco, d/o Mr. Filipe
Colaco, aged 29 years, housewife, r/o
Raia, Tembi, Margao, Salcete, Goa. Respondent

Mr. Prasad U. Dessai, Advocate for the Applicant/Petitioner.

Mr. Gaurish Agni, Advocate for the Respondent.

CORAM:- C. V. BHADANG, J.

DATE:- 21st MARCH, 2016.

ORAL JUDGMENT:

Heard. Admit. Mr. Agni, learned Counsel waives service
for the respondent. Heard finally by consent of the parties.

2. The petitioner had filed Matrimonial Petition No. 17/2013/B before the learned Civil Judge Senior Division, Panaji, Goa, against the respondent for dissolution of marriage. It appears that the said petition was dismissed in default on 31.10.2013. The petitioner filed Civil Miscellaneous Application No. 72/2013/B, for restoration of the petition under Order 9 Rule 4 and Section 151 of the Civil Procedure Code. The learned trial Court framed two points, namely, (1) whether the petitioner has made out sufficient cause for not appearing before the Court on 31.10.2013 and (2) whether the application is barred by limitation.

3. Insofar as the first point is concerned, the learned trial Court has answered the same in the affirmative. However, on the second question, the learned trial Court found that the application was not filed within the period of limitation. It was held that considering the period being spent in obtaining the certified copy, the application should have been filed on 03.12.2013. However, the application was filed on 04.12.2013. The net result is that on account of a day's delay, the application for restoration was rejected.

4. I have heard the learned Counsel for the applicant/petitioner and the respondent. Undisputedly, 03.12.2013 was a local holiday on account of St. Xavier's feast, as such the application could not have been filed on 03.12.2013. It is trite that if, the day on which the period of limitation expires, falls on a holiday, such suit or application or other proceedings can be filed on the next date. Once the trial Court has found that sufficient cause for not appearing before the Court on 31.10.2013 is made, the application could not have been rejected on technical ground. Even otherwise, having regard to the fact that 03.12.2013 was a holiday, the application was within limitation.

5. In such circumstances, the following order is passed:
- (a) The Civil Revision Application is allowed.
 - (b) The impugned order dated 06.12.2014 is hereby quashed and set aside.
 - (c) The application being Civil Miscellaneous Application No. 72/2013/B in Matrimonial Petition No. 17/2013/B is hereby allowed.

(d) The matrimonial petition is restored to the file of the learned Civil Judge Senior Division, Panaji, at its original number.

(e) The learned trial Court shall decide the same on its own merits, in accordance with law.

(f) The parties to appear before the trial Court on 04.04.2016 at 10:00 a.m.

6. The Civil Revision Application stands disposed of with no order as to costs.

C. V. BHADANG, J.

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