

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 391 OF 2016

MR. JAIME BATISTA ROSARIO PONTES. ... Petitioner
Versus
MRS. PURITY FERNANDES AND 4 ORS., ... Respondents

Shri D.D. Zaveri, Advocate for the Petitioner.

Coram:- C. V. BHADANG, J.

Date:- 6th October, 2016

ORAL ORDER:

On 2/05/2016, a notice for final disposal was issued in this case. However, none appears for the respondent though served. The petition is taken up for final disposal.

2. The petitioner contends that the respondent Jose D'Souza and now deceased Rita Fernandes had carried out an illegal construction of a compound wall on the land belonging to the petitioner. The petitioner made a complaint to the Village Panchayat, who issued a notice on 22/09/2008 directing Jose D'Souza and Rita Fernandes to demolish the illegal structure. This was challenged by the respondent no.1 and now deceased Rita Fernandes in an appeal being Panchayat Appeal no.92/2008 before the Additional Director of Panchayat. During the pendency of the appeal, Rita Fernandes died on 31/12/2011. Her legal heirs filed an application on 24/04/2012 for bringing themselves on record. The learned Additional Director of

Panchayat allowed the same by order dated 4/12/2012. This was challenged by the petitioner before the learned District Judge in Civil Revision Application No.1/2013. The learned District Judge dismissed the Civil Revision Application by judgment and order dated 24/09/2014 holding that as Jose D'Souza and Mrs. Rita Fernandes were husband and wife, Article 137 of the Limitation Act applied and the period for bringing legal representatives was three years. The petitioner challenged the same before this Court in Writ Petition No.2/2015. It was contended that Jose D'Souza and Rita Fernandes are not husband and wife and, as such, the learned District Judge was in error in invoking Article 137 of the Limitation Act. This Court by judgment and order dated 3/07/2015, while disposing off Writ Petition No.2/2015 granted liberty to the petitioner to approach the revisional Court for correcting the observation. In consequence, the petitioner approached the revisional Court. The learned District Judge by an order dated 6/11/2015 has partly allowed the application to the extent of ordering the correction by deleting paras 18 to 21 and part of para 24 where it was observed that the original appellant no.1 Jose D'Souza was spouse of the deceased appellant no.2 Rita Fernandes. However, the order passed by the Additional Director was upheld. This takes the petitioner to this Court.

3. I have heard the learned Counsel for the petitioner. He submits that the Village Panchayat could not have issued a joint notice for

demolition as the alleged illegal construction was by two separate individuals. It is submitted that once the learned District Judge has found that the observation in the impugned order dated 24/09/2014 were incorrect, the learned District Judge could not have upheld the order passed by the Additional Director. The learned Counsel also points out that the death certificate of Rita Fernandes was obtained by the legal representatives on 26/03/2012, which was within 90 days of the death of Rita Fernandes, however, the application for bringing the legal representatives was filed on 24/04/2012 and there is no explanation for the delay. He, therefore, submits that the matter be remanded back to the learned District Judge.

4. On a careful consideration of the circumstances and the submissions made, I do not find that any case for interference is made out. As has been found by the learned District Judge, the original appellant no.1 Jose D'Souza and Mrs. Rita Fernandes are not related as husband and wife and, as such, Article 137 could not have been attracted. The matter would be governed by Article 120 which provides for limitation of 90 days. Reckoning the period of 90 days, there is a delay of about 28 days in filing the application for bringing the legal representatives on record. In such circumstances, the delay cannot be said to be of a substantial or a gross nature. It is now well settled that in matters where the delay is not of a gross or substantial nature, a liberal approach is warranted. (See the judgment of Esha Bhattacharjee V/s. Managing Committee of Raghunathpur Nafar

Academy & Ors. (2013) 12 SCC 649). Thus, if the impugned order has the effect of condoning the delay of about 28 days, I see no reason to interfere. One of the reasons given by the learned Additional Director is that the appeal subsists in so far as the appellant no.1 is concerned. In so far as the contention that a joint notice was issued by the Village Panchayat cannot be gone into this petition. If such a contention is raised the learned Additional Director shall decide the same in accordance with law. The petition is without any merit and is accordingly dismissed.

C. V. BHADANG, J.

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