

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 459 OF 2015

SHRI. LAXMAN CHARI (DECEASED)
THROUGH LEGAL HEIRS.,

... Petitioner

Versus

MR. LAWRENCE D'SOUZA AND 2 ORS.,

... Respondents

Ms. Susan Linhares, Advocate for the Petitioner.

Mr. Ganesh R. Naik, Advocate for Respondent Nos. 1 and 2.

Coram:- S. B. SHUKRE, J.

Date:- 16th February, 2016

P.C:

Heard learned Counsel for the petitioner and learned Counsel for respondent nos. 1 and 2. Respondent no. 3 is the son of the petitioner.

2. A preliminary objection has been taken by learned Counsel for respondent nos. 1 and 2 that this Writ Petition suffers from inordinate delay and inexcusable laches and therefore, he submits that the petition deserves to be summarily dismissed.

3. According to learned Counsel for the petitioner, the legal heirs of the petitioner are illiterate persons, who do not understand legal niceties and are dependent on the advise of a lawyer to prosecute the remedy available in law. She submits that the legal heirs of the petitioner were wrongly advised by their lawyer, which is the reason for filing the application under Section 8-A of the Goa, Daman and Diu Mundkar Act, for declaring the petitioner as mundkar in the dwelling house, which application was not maintainable and ought not to have been filed by their Advocate. She submits that this application came to be dismissed in default on 03.11.2014 and thereafter, the legal heirs of the petitioner realised their mistake and changed their Advocate. She further submits that the legal heirs of the petitioner got the right advise from their new Advocate and after making preparations, this Writ Petition has been filed in June, 2015.

4. Learned Counsel for the petitioner further submits that the petitioner has a good case as the order sought to be impugned in this petition completely ignores the evidence available on record and explanation to section 2(p) of the Goa,

Daman and Diu Mundkar Act, under which, the petitioner deserves to be declared as a deemed mundkar, in view of the fact that the petitioner has been residing in the house with fixed habitation with the consent of respondent nos. 1 and 2 since the year 1965 and no proceedings were initiated at any point of time by respondent nos. 1 and 2 for eviction of the petitioner from the dwelling house. She further submits that these facts have been completely ignored by the learned Administrative Tribunal and thus, great prejudice has been caused to the petitioner.

5. According to learned Counsel for respondent nos. 1 and 2 even on merits of the case, the petitioner is not likely to succeed as the learned Administrative Tribunal has correctly dealt with the aforesaid submissions of the petitioner. According to him, there are admissions given by the petitioner that the petitioner was the care taker of the house and there is a agreement in that regard between the petitioner and respondent nos. 1 and 2. He submits that section 2(p) debars a person from being declared as mundkar, if he is inducted in the house as a caretaker.

6. There can be no doubt about the fact that this petition has been filed with great delay and therefore, the petitioner must show some reasonable cause which resulted in the delay in filing of the petition. The order of the Administrative Tribunal passed in Mundkar Revision Application No. 60/2000 is of the date 10.02.2012. According to the pleadings of the petitioner, the reason for the delay was that the legal heirs of the petitioner being not financially well off could not get the services of a suitable lawyer to file the present Writ Petition. This is the only explanation that has been given in the memo of petition for delay occurred in filing of this petition. The affidavit by Smt. Sheela P. Chari, one of the legal heirs of the petitioner, however, states altogether a different story. In fact, this affidavit attempts to put forth an entirely a new case about the delay. It is stated in the affidavit that the delay had mainly occurred because of prosecuting of a wrong remedy before a wrong forum and for making preparations, some time was taken in filing of the Writ Petition. If this was the reason for the delay, I do not understand as to what had prevented the legal heirs of the petitioner from incorporating the same in the memo of the Writ Petition. No attempt even to amend the pleadings has been made by the legal heirs of the petitioner. Even if it is

accepted that the initial delay was attributed to prosecuting a wrong remedy before the wrong Court, it is a fact that application under Section 8-A was indeed filed by the original petitioner before the Court of Joint Mamlatdar and the same was dismissed in default on 03.11.2014, still the legal heirs of the petitioner are required to explain, atleast broadly, as to why it took time of 8 months for them to prosecute the right remedy. Some vague explanation in this regard, like time taken for making of preparations, has been given by the legal heirs of the petitioner and therefore, in my view, the explanation now submitted cannot be seen as disclosing sufficient cause necessary for invoking the extra ordinary jurisdiction of this Court at a belated hour of time.

7. Learned Counsel for the petitioner has submitted that the first legal heir of the petitioner that is petitioner no. 1(a), Smt. Bimaroti Chari is a Senior Citizen about 70 years of age, petitioner no. 1(b), Smt. Sheela Chari is a widow and housewife and petitioner no. 1(c)(c) was a minor till 14.11.2014 and all of them are illiterate and all these facts have contributed to delay in filing of this petition. From the cause title, it appears that there is also one more legal heir, who is shown as petitioner no.

1(d), Shri Raghuvir Chari. It is not known as to what petitioner no. 1(d) is doing and as to whether or not he too was suffering from any disability in showing the requisite promptitude. In any case, just because some of the legal heirs are persons like a housewife or a minor, law cannot be stretched to such an extent as to say that for such persons there is complete exemption from requirement of showing reasonable cause, although it's perspective may change. I have already found that petitioners have come up with two different stories. This fact itself would show that petitioners were indolent. Otherwise, there would not have been change in their stand. Therefore, plea of ignorance or ground of disability attached to a housewife or minor cannot be accepted.

8. Thus, I am of the view that this petition deserves to be dismissed on the ground of inordinate delay and laches. The objection of the learned Counsel for the respondent nos. 1 and 2 is upheld. Since this Writ Petition is being dismissed on the ground of laches, I do not think it necessary to consider the arguments of both sides on the merits of the matter.

9. Writ Petition stands dismissed.

S. B. SHUKRE, J.

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