

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.839 OF 2016**

SHRI. SHAMSUNDAR ATCHUT NAIK ...PETITIONER
V/S

MR. SACHIN PANDURANG
NAIK & 3 ORS. ...RESPONDENTS

Shri Prasad U. Dessai, Advocate for the
Petitioner.

CORAM : C.V. BHADANG, J.

DATE : 19th OCTOBER, 2016

ORAL ORDER :

The learned Counsel for the petitioner orally requests for restoring the petition, which was dismissed earlier today. In the interest of justice, the petition is restored to file.

2. The petitioner, who is the landlord had filed proceedings for eviction against the tenant, now deceased Pandurang Shirodkar. During the pendency of the proceedings before the Rent Controller Pandurang Shirodkar died on 4/12/2003. The petitioner filed an application

for bringing his legal representatives on record, who are the present respondents. Although that application was allowed, the necessary amendment to the cause title of the application was not carried out and the cause title remained unamended. The Rent Controller allowed the application filed by the petitioner vide judgment and order dated 14/09/2012. In the meantime, the jurisdiction to try the cases under the Goa Buildings (Lease, Rent and Eviction) Control Act, 1968 transferred to Civil Court. Before the Civil Court, the petitioner filed Civil Misc. Application No.9/2014/C to permit him to carry out the necessary amendment to incorporate the names of the legal representatives in the cause title of the judgment and order dated 14/09/2012, which application was allowed on 9/09/2014. Still the necessary correction in the cause title was not carried out. Ultimately, by corrigendum dated 14/11/2014, the Civil Court directed the necessary amendment to be carried out in terms

of the order dated 9/09/2014. It is only consequent upon this corrigendum that the respondents were shown as parties to the proceedings.

3. The respondents sought to challenge the order of the Rent controller along with an application for condonation of delay which has been allowed by the learned District Judge by order dated 3/10/2015 which is subject matter of challenge in this petition.

4. I have heard Shri Dessai, the learned Counsel for the petitioner. With the assistance of the learned Counsel for the petitioner, I have gone through the relevant records and the impugned order passed.

5. It is submitted by the learned Counsel for the petitioner that the learned District Judge ought to have granted opportunity to the advocate to contest the application. It is

submitted that a notice was issued to the respondents to appear before the Rent controller and they had appeared and contested the proceedings and were aware of the impugned order of eviction passed against them. He, therefore, submits that the delay is not properly explained.

6. A perusal of the impugned order shows that the petitioner neither filed a reply to the application for condonation of delay nor there was any appearance on behalf of the petitioner on the date on which the application for condonation of delay was scheduled for hearing. The learned District Judge, after noticing the fact that the present respondents were shown as parties to the proceedings only after corrigendum dated 14/11/2014 was issued and that the corrigendum was served on the respondents on 10/02/2015, after which the appeal along with the application for condonation is filed within thirty days, has condoned the delay.

7. I have carefully considered the circumstances and the submissions made and I do not find that the contention raised on behalf of the petitioner can be accepted. In the first place, the petitioner has failed to file a reply to the application for condonation of delay nor there was any appearance on behalf of the petitioner when the application for condonation was scheduled for hearing. Be that as it may, the petitioner did not carry out the necessary amendment after the death of the original tenant although the application for bringing the legal representatives of the original tenant Pandurang Shirodkar on record was allowed. The necessary correction of the cause title was not even carried out after order dated 9/09/2014 in CMA No.9/2014/C. It can thus be seen that it was only on the issuance of the corrigendum on 14/11/2014 that the judgment and order of the Rent Controller was ultimately corrected showing the present respondents as parties. The learned

District Judge has found that the corrigendum was served on the respondents on 10/02/2015 and the application for condonation was filed on 2/03/2015 i.e. within 30 days from the service of the corrigendum. If, in such circumstances, the learned District Judge has exercised the discretion to condone the delay, I do not find that this Court can take a different view while entertaining the challenge under Article 227 of the Constitution of India. In any event, the petitioner shall get an opportunity to contest the appeal and the impugned order does not result in any manifest injustice to the petitioner.

8. For these reasons, I am not inclined to entertain the petitioner. The petition is accordingly dismissed.

C.V. BHADANG, J.

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