

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 782 OF 2016

SHRI. ALVITO RODRIGUES AND ANR. ... Petitioner
Versus
SHRI. VASCO DA GAMA (DEC) AND ANR. ... Respondent

Mr. Jagannath Jayant Mulgaonkar, Advocate for the Petitioners.
Mr. Vivek Angelo Rodrigues, Advocate for the Respondent no.
2.

Coram:- F. M. REIS, J.

Date:- 5th December, 2016

P.C.

Heard Shri J. J. Mulgaonkar, learned Counsel appearing for the Petitioners and Shri Vivek Rodrigues, learned Counsel appearing for the Respondent no. 2.

2. The Petition challenges an Order dated 20.07.2016 whereby an application filed to transpose the Respondent no. 3 as the legal representative of the Appellant came to be granted.

3. Shri Mulgaonkar, learned Counsel appearing for the Petitioners, has raised various objections to the impugned Order essentially contending that as there was no application for condonation of delay, the learned Judge was not justified to pass the impugned Order. Learned Counsel further pointed out that on account of inaction on the part of the parties, the Appeal itself

has abated as no steps were taken to bring the legal representatives on record. Learned Counsel as such pointed out that the impugned Order be quashed and set aside.

4. On the other hand, Shri Rodrigues, learned Counsel appearing for the Respondents, submits that the question of filing any condonation of delay would not arise as the Respondent no. 3 was already a party to the proceedings and the application allowed by the learned Judge is merely for transposing the Respondent no. 3 as legal representatives being a moiety sharer of the deceased Appellant. Learned Counsel as such pointed out that the Petition be rejected.

5. Taking note of the rival contentions and considering the findings of the learned Judge in the impugned Order, I find that there is no jurisdictional error committed by the learned Judge whilst passing the impugned Order. Respondent no. 3 was already a party to the proceedings and, as such, for the purpose of transposing the Respondent no. 3 as an Appellant, there was no requirement of filing any application for condonation of delay in the circumstances of the case.

6. But, however, Shri Mulgaonkar, learned Counsel appearing for the Petitioners, submits that the Respondent nos. 1 and 2 are contesting the Appeal without depositing any arrears of rent. Mr.

Vivek Rodrigues, learned Counsel submits that without prejudice to his rights and contentions, though the amount claimed by the Petitioners towards arrears of rent works out to more than a sum of Rs. 1,40,000/- nevertheless the Petitioners shall deposit a sum of Rs.1,00,000/- within four weeks from today before the Appellate Court. It is further pointed out by the learned Counsel appearing for Respondents that the Respondents are not liable to pay any such amount as, according to him, the rents were already paid to one of the co-owners of the subject property.

7. In the peculiar facts and circumstances of the case as the Respondent is contesting the Appeal, the arrears of rent have to be deposited before the Appellate Court. No doubt, such deposit will be without prejudice to the rights and contentions and such deposit will not influence the learned Judge whilst disposing of the Appeal preferred by the Appellants on its own merits in accordance with law.

8. In such circumstances, I find no reason to interfere in the impugned Order passed by the learned Judge but, however, liberty to the Respondent nos. 1 and 2 to deposit a sum of Rs.1,00,000/- before the Appellate Court within a period of four weeks from today without any prejudice to the rights and contentions of the parties. The learned Judge is accordingly directed to decide the Appeal as expeditiously as possible

preferably within a period of three month from the receipt of this Order.

9. Petition stands disposed of.

F. M. REIS, J.

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