

IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO.785 OF 2014.

Shri Ranganath Datta
Fondekar, (since deceased)
through his legal heirs

1. Smt. Laxmibai Ranganath
Fondekar, W/o late
Ranganath Fondekar,
major of age,
2. Shri Devdatt Ranganath
Fondekar, s/o late
Ranganath Fondekar,
major of age,
3. Mr. Sheetal Devdatt
Fondekar, w/o Devdatt
Fondekar, major of age
4. Shri Tirtharup Ranganath
Fondekar, s/o late
Ranganath Fondekar,
major of age,
5. Miss Sulaksha Ranganath
Fondekar, d/o late
Ranganath Fondekar,
major of age, all
residents of Amber
Apartments, 1st Floor, F-1,
Near Cine Vishant,
Aquem, Margao, Goa.
6. Sandeep Naik, Major of
age, and his wife,
7. Mr. Suvidhya Sandeep
Naik, d/o late Ranganath
Fondekar major of age,
both resident of Karmal,
Sanvordem-Goa.

..... Petitioners.

Versus

1. M/s Ashwini Builders and

Engineers, A Partnership firm having its registered Office at Shop No.1, c/o Gauri Sports Midland Apartments, Next to Hotel Woodland, Margao Goa, through its partner Shri Ashok G. Rajadhyak,

2. Shri Ashok G. Rajadhyak, Major of age, businessman, Having his office at Shop No.1, c/o Gauri Sports Midland Apartments, Next to Hotel Woodland, Margao Goa.
3. Smt. Sofia Mendes, Major of age, businessman, Having his office at Shop No.1, c/o Gauri Sports Midland Apartments, Next to Hotel Woodland, Margao Goa.
4. Shri Dayanand Neogi, Major of age, 2, Station Road, Margao, Goa. Respondent.

Mr. R. G. Ramani, Advocate for the petitioners.

CORAM : F.M. REIS, J.

DATE : 24th November, 2016.

ORAL JUDGMENT

Heard Shri R. G. Ramani, learned Counsel for the petitioner. None for the respondents though served.

2. The challenge in the above petition is to an original order dated 4.7.2013 dismissing the application to bring the legal representatives of the deceased complainant on record and the subsequent order dated 20.8.2013 whereby the proceedings were dismissed as abated.

3. Shri R. Ramani, learned Counsel appearing for the petitioner points out that arguments were heard and concluded on the complaint filed by the original complainant and the matter was posted for judgment though the matter was further prolonged as it was referred to Lok Adalat. It is further submitted that in the meanwhile after the complainant expired and within the time prescribed the legal representatives of the original complainant had filed an application to bring them on record on 25.10.2012 by producing the death certificate inter alia suggesting that the deceased complainant had expired on 12.9.2010. The learned Counsel has also taken me through the endorsement in the roznama that the names of the legal representatives were already produced by the Advocate for the complainant. The learned counsel further submits that the said two orders dated 4.7.2013 and 20.8.2013 came to be passed without considering that the petitioners had already taken steps

to bring themselves on record on 25.10.2010 as reflected in the roznama order. The learned Counsel further points out that the petitioners thereafter preferred an appeal before the State Consumer Forum which came to be dismissed as the application for condonation of delay was rejected. The learned Counsel has thereafter taken me through the impugned orders to point out that the District Forum has erroneously exercised its jurisdiction which calls for interference of this Court. The learned Counsel further submits that Section 13(7) of the Consumer Protection Act clearly provides that provisions of Order 22 of CPC are applicable to the findings of the Consumer Forum.

4. I have considered the submissions of the learned Counsel appearing for the petitioners and I have also gone through the record.

5. The short point to be examined is the legality or otherwise of the impugned orders dated 4.7.2013 and 20.8.2013. The roznama entries referred to herein above dated 6.12.2010 clearly shows that the petitioners have already taken steps to bring themselves on record upon the death of the

original complainant within the time prescribed.

6. In such circumstances, the question of holding that the proceedings have already abated or dismissing the application for bringing the legal representatives on record are unsustainable in law. Even assuming that the proceedings have abated it does not preclude the parties from filing an application to set aside abatement and pray for the condonation of delay.

7. In the present case, looking into the cogent material on record in the form of orders passed in the proceedings before the District Forum which clearly suggest that steps were already taken to bring the legal representatives of the deceased complainant in time, the abatement, if any, deserves to be set aside.

8. In such circumstances, I find that, the impugned orders dated 4.7.2013 and 20.8.2013 passed by the District Forum does not survive and deserve to be quashed and set aside.

9. At this stage, Mr. Ramani learned Counsel appearing

for the petitioners submits that as per the bailiff report respondent no.4 has already expired 8 years back on 16.3.2008 when the proceedings were pending before the District Forum.

10. In such circumstances, name of the respondent no.4 stands deleted. Looking into the ultimate view, I propose to take the petitioners are at liberty to file an appropriate application before the District Forum to bring the legal heirs of the deceased respondent no.4 on record, if so advised, in accordance with law.

11. In view of the above, the impugned orders 4.7.2013 and 20.8.2013 deserve to be quashed and set aside. The application to bring legal representatives of the deceased petitioner dated 25.10.2012 is allowed and the legal representatives are ordered to be brought on record. Subject to the above, rule is made absolute in the above terms.

F.M. REIS, J.

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