

IN THE HIGH COURT OF BOMBAY AT GOA**FIRST APPEAL NO. 89 OF 2017**

1. The Regional Passport Officer, Regional Passport Office, Passport Bhawan, Patto Plaza, Panaji-Goa.
 2. Union of India, Through the Secretary External Affairs Ministry, New Delhi, "South Block".
- Appellants

Versus

Mr. Caitano Costa, s/o late Baptista Costa, aged 50 years, married, service, R/o H. No. 259, Muxer, Panchwadi, Ponda-Goa, represented by his Power of Attorney, Mrs. Tease Salina D'Costa, aged 40 years, married, housewife, R/o H. No. 259, Muxer, Panchwadi, Ponda-Goa.

.... Respondent

Shri Mahesh Amonkar, Central Government Standing Counsel for the Appellants.

Shri Vallabh Pangam, Advocate for the Respondent.

CORAM:- C. V. BHADANG, J.

DATE:- 14th AUGUST, 2017

ORAL JUDGMENT:

Heard.

2. Admit.

3. Shri Pangam, the learned Counsel for the

respondent, waives service. Heard finally by consent of parties, as the appeal raises a short question.

4. The respondent filed a suit for declaration that his date of birth is wrongly entered in his Passport No. F-5218625 and for consequential relief of a direction to the appellant no. 1 (defendant no. 1 before the Trial Court) to make necessary changes in the passport as per the Birth Certificate and the Marriage Certificate as set out in para 4 of the application dated 16.10.2015. In short, the respondent wants the date of birth to be corrected from 18.08.1961 to 18.08.1965 and some other changes.

5. It appears that prior to the filing of the suit, a notice under Section 80 of the Civil Procedure Code, 1908 (Code, for short) was served on the appellants, which was followed by the suit. The appellants remained ex-parte and chose not to contest the suit. The learned District Judge by the impugned judgment and decree, decreed the suit in the following terms, which is subject matter of challenge in this appeal:

“Suit is decreed in terms of prayer clause (a) and (b).

It is declared that date of birth of the plaintiff is wrongly and erroneously entered in the

Passport No. F-5218625.

Defendant no. 1 shall make necessary changes in the Passport No. F-5218625 as per the details contained in the Birth Certificate and the Marriage Certificate.

No order as to costs.

Decree to be drawn accordingly.”

6. I have heard Shri Amonkar, the learned Central Government Standing Counsel for the appellants and Shri Pangam, the learned Counsel for the respondent. With the assistance of the learned Counsel for the parties, I have gone through the record and the impugned judgment.

7. On behalf of the appellants, reliance is placed on an office memorandum (O.M.) dated 26.11.2015, which sets out the guidelines with regard to the change/correction of the entries in the passport. It is contended that such an application for correction has to be filed within reasonable period i.e. within a period of five years, from the date of issue of the passport. It is submitted that the application, which was filed beyond the period of five years, cannot be considered.

8. The learned Counsel for the respondent states that the learned District Judge had no occasion to consider the said

contention as the appellants chose to remain ex-parte and thus, cannot be allowed to raise it for the first time in appeal. Reliance is placed on the subsequent O.M. dated 22.09.2016, in order to submit that, those applications filed prior to O.M. dated 26.11.2015, have to be considered in accordance with the relevant rules and regulations prevailing prior to the date of the said O.M. In other words, it is contended that the application in the present case, having been filed on 16.10.2015, the same was not governed by the guidelines as set out in the O.M. dated 26.11.2015.

9. I have carefully considered the rival submissions of the parties. At the outset, it needs to be noted that the appellants chose to remain ex-parte before the learned District Judge and therefore, the contentions based on the O.M. dated 26.11.2015, were not raised before the learned District Judge. However, looking to the fact that the contention is based on the O.M. of which the Court can take notice, I have considered the said contention. Undisputably, the application for correction was filed by the respondent on 16.10.2015 i.e. prior to the O.M. dated 26.11.2015. Clause 4(ii) of the O.M. dated 26.11.2015 reads thus:

*“(ii) If an applicant applies for the change of date of birth in the passport within a reasonable period of time i.e. **within a span of five (5) years from, the date of issue of passport having the alleged wrong date of birth**, with the birth certificate issued by the Registrar of Births & Deaths stating that the date of birth recorded in the passport was based on the entries mentioned documents other than the Birth Certificate, the request of such an applicant irrespective of the difference in the dates of birth, may be considered by the Passport Issuing Authority. However, before the issuance of passport with changed date of birth, the Passport Authority shall also levy appropriate penalty on the applicant for obtaining passport on previous occasion by providing wrong information regarding his/her date of birth.”*

(Emphasis Supplied)

10. This O.M. was followed by a subsequent O.M. dated 22.09.2016, in which some additional guidelines for the PIA (Passport Issuing Authority) were laid down. Clause 2 of the O.M. dated 22.09.2016 reads thus:

2. Following judicial pronouncements made after the issue of the O.M. dated 26.11.2015 and 13.01.2016, the following are the additional guidelines for PIA on the above subject:

- i. The PIA shall consider the explanation of each applicant seeking change in the DOB to find the genuineness of the claim even though more than five years have elapsed after the issue of the passport.*
- ii. The PIA need not entertain any application in a routine manner for correction of DOB unless such application is filed along with a genuine explanation explaining the delay in approaching the PIA. If such an application is filed, the PIA shall consider the same and take appropriate decision as per the instructions contained in the circulars dated 26.11.2015 and 13.01.2016.*
- iii. The PIA shall entertain all applicants for correction of DOB, if such holder of the passport produces a court decree filed in a suit initiated prior to issuance of O.M. dated 26.11.2015 wherein a direction is given to the PIA to correct the DOB notwithstanding the direction in the O.M.*
- iv. If any application for change in DOB is filed for correction prior to issuance of the O.M. dated 26.11.2015, the same shall be considered in accordance with the relevant regulations prevailing prior to the date of the O.M.*

11. The learned Counsel for the respondent in all fairness does not dispute that Clause 2(iii) shall not apply in this case, in as much as, the suit was not initiated prior to the issuance of O.M. dated 26.11.2015. He however submits that in

terms of clause 2(iv) of the O.M. dated 22.09.2016, the PIA will have to consider the application on its own merits and in accordance with the relevant rules and regulations prevailing prior to the O.M. dated 26.11.2015. In such circumstances, the parties submit that the impugned decree may be appropriately modified.

12. In the result, the following order is passed:

ORDER

- (a) The appeal is partly allowed.
- (b) The impugned judgment and decree dated 30.05.2016, is modified.
- (c) The appellant no. 1 (PIA), shall consider the application filed by the respondent on its own merits and in accordance with the relevant regulations prevailing prior to the O.M. dated 26.11.2015.
- (d) The PIA shall decide the application as expeditiously as possible and within a period of 12 weeks from today.
- (e) In the circumstances, there shall be no order as to costs.

(f) Decree be drawn accordingly.

C. V. BHADANG, J.

EV