

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 265 OF 2017

MR. CACIANO STEPHEN D'SOUZA., ... Petitioner
Versus
MRS. PERPETUA D'SOUZA AND 85 ORS., ... Respondents

Shri Amey Jagdish Sinai Kakodkar, Advocate for the petitioner.
shri Ashwin D. Bhobe, Advocate for the respondent nos.3,4,64 to 68 and 81 to 86.

Coram:- M. S. SONAK, J.

Date:- 10th April, 2017

P.C.

Heard Shri A. Kakodkar, learned Advocate for the petitioner and shri A. D. Bhobe, learned Advocate for the respondent nos.3,4,64 to 68 and 81 to 86.

2. On 14.3.2017, this Court has made the following order:-

"Issue notice for final disposal to the contesting respondent nos.3, 4, 64 to 68 and 81 to 86 returnable on 3/04/2017. Humdast allowed."

3. Accordingly, the matter is taken up for final disposal today.

4. Upon hearing the learned Counsel for the parties and upon perusing the material on record, it does transpire that the petitioner has not been perusing the matter with diligence. In fact, it is necessary to record that the petitioner was granted last opportunity to proceed with the matter on 27.10.2016.

Thereafter an another ultimate opportunity was granted to the

petitioner to proceed with the matter on 22.11.2016. In these circumstances, least that was expected of the petitioner was to be diligent in the matter of attending to the matter on 8.12.2016. On this date neither the plaintiff nor his advocate were preset. On behalf of the petitioner, however, an application was made stating that since the petitioner is unwell further adjournment may be granted. The learned Judge by order dated 8.12.2016 disagreed with the adjournment and closed the evidence of the petitioner.

5. The petitioner then took out the application seeking recalling of the order dated 8.12.2016. In this application, reasons stated were again at variance with the reasons which were set out in the application dated 8.12.2016 for the absence.

6. In the facts and circumstances, the learned Trial Judge as also Shri Bhobe, are right in submitting that there has been negligence in the matter.

7. Although, there is no reason to disagree with the learned Trial Judge on the aspect of negligence, it must be noted that closure of the evidence is an extremely harsh order. No doubt, where the parties do not co-operate at all such orders have to be issued. However, in the facts and circumstances of the present case although, it is true that the petitioner has been negligence, it cannot be said that negligence was such a degree as could not have been compensated by imposing exemplary costs. Further the petitioner could always be put to terms to proceed with the

matter without any further delay.

8. Accordingly, the impugned orders dated 8.12.2016 and 10.2.2017 are set aside subject to the petitioner depositing before the learned Trial Judge costs of Rs.15,000/-(Rupees fifteen thousand only) within a period of two weeks from today. In case costs are not deposited within a period of two weeks from today, the petitioner shall not get the benefit of this order and this petition shall be deemed to have been dismissed without any further reference to the Court. However, if the amount of costs are deposited within two weeks, the contesting respondents will be entitled to withdraw the same unconditionally. Further, the learned Trial Judge shall permit the cross examination to continue and permit plaintiff's further evidence. The petitioner is directed to remain present on any further date or date that may be fixed for the purpose of cross examination. The petitioner shall also not delay the trial for any reason. The learned Trial Judge is requested to dispose off the matter as expeditiously as possible.

9. Petition is disposed off in the aforesaid terms.

10. All the concerned to act on the duly authenticated copy of this order.

M. S. SONAK, J.