

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.281 OF 2017**

1. Shri Nandan Simepurushkar
S/o Das Hari Simepurushkar
Indian National
Major of age, Married,
2. Shri Das Hari Simepurushkar,
Major of age, Married,
Indian National
Occupation Taxi Driver,

Both residing at House No.484/2
Sankwadi Airport Bardez-Goa .. Petitioners

Vs

Mr. Mario Valadares
S/o Shri John Valadares,
Age 43 years, Married,
Occupation - Business,
R/o Sankwadid Arpora,
Bardez Goa and also residing
at Ave Mariam Nagoa
Salcete Verna Goa .. Respondent

Mr. G. Naik, Advocate for the petitioners.

Mr. Rohit Bras De Sa, Advocate for the respondent.

Coram :- M. S. SONAK, J.

DATE :- 20th April, 2017

ORAL JUDGMENT :-

Heard Mr. G. Naik for the petitioners and Mr. De Sa
for the respondent.

2. Rule. With the consent and at the request of the learned Counsel for the parties, rule is made returnable forthwith.

3. This petition challenges the orders dated 02/12/2016 and 03/02/2017, which have the effect of denying leave to the petitioners to file Written Statement. The record indicates that before the expiry of 90 days from the date of service of summons for settlement of issues, the petitioners had filed an application, seeking extension of time to file the Written Statement. The learned Trial Judge on 02/12/2016, noted that an application was moved on 90th day and, therefore, granted opportunity to the petitioners to file Written Statement upto rising of the Court and in failure of such, barred the petitioners from filing their Written Statement.

4. The petitioners, thereafter, took out Civil Application seeking condonation of delay and leave to file Written Statement. This application was dismissed on 03/02/2017 by observing that since earlier order dated 02/12/2016 had not been challenged, the same had attained finality and no relief could be granted to the petitioners. The approach of the learned Trial Judge cannot be held to be proper in the circumstances of the case. In the matter

of this nature, liberal approach was warranted, particularly since the application was made within a period of 90 days from the date of service of summons for settlement of issues. At the highest, this is a matter where some time bound schedule could have been fixed and further some costs also could have been imposed upon the petitioners. However, this was certainly not a matter, where the petitioners ought not to have denied opportunity of filing their Written Statement. This is a case where the plaintiff seeks damages to the extent of Rs.50 Lakhs for the defamation, which he alleged as being caused by the petitioners.

5. The impugned orders are contrary to the legal position clarified by this Court in the case of ***Pandurang G. Naik Gaonkar Vs. Nilkanth Marthe*** (W.P. No.709/2013) decided on 09/01/2014.

6. It is possible that there is some lapse on the part of the petitioners. However, the lapse was certainly not to such extent as to deprive them even from filing their Written Statement. At least, when the petitioners applied for condonation of delay and leave to file Written Statement, the same could have been considered by the learned Trial Judge. The second application was in fact seeking recall of the earlier order dated 02/12/2016.

Procedure, it must be remembered, is only handmaid of justice and it is not mistress.

7. For the aforesaid reasons, the impugned orders are set aside. The petitioners are granted an opportunity to file Written Statement within a period of one week from today. However, the petitioners, to pay costs of Rs.2000/- to the respondents within a period of two weeks from today.

8. Rule is made absolute in the aforesaid terms, with costs as aforesaid.

SMA

M. S. SONAK, J.