

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 461 OF 2017

1. Shri Audhut Dattaram Shet Verekar
Son of Dattaram Shet Vernekar
Major, married, businessman,
(since deceased) through his legal
representatives

1(a) Mrs. Sandhya Avadoot Shet Verekar
Wife of late Audhut Shet Verekar
Resident of Chafebhat, Savoi-Verem
Ponda - Goa.

1(b) Miss Deepa Audhut Shet Verekar
Resident of Chafebhat, Savoi-Verem
Ponda - Goa.

1(c) Miss Dipti Audhut Shet Verekar
Resident of Chafebhat, Savoi-Verem
Ponda - Goa.

1(d) Miss Trupti Audhut Shet Verekar
Wife of late Audhut Shet Verekar
Resident of Chafebhat, Savoi-Verem
Ponda - Goa.

.... Petitioner

Versus

Shri Atmaram Jairam Pilankar
Son of Jairam Pilankar
Major in age, Married,
Resident of Kankaband,
Mapusa - Goa

.... Respondent

Mr. J. J. Mulgaonkar, Advocate for the petitioner.

Coram :- C. V. BHADANG, J
Date : 14th June, 2017.

ORAL ORDER:

The petitioners are the original defendants. The Suit filed by the respondent against the petitioners was dismissed for non-prosecution on 09.09.2014. The respondents filed Civil Miscellaneous Application

no. 26 of 2014/A for restoration of the Suit. That application was, purportedly, under Order 9 Rule 9 of CPC. The learned Trial Court by Order dated 28.01.2016 restored the Suit. Feeling aggrieved, the petitioners are before this Court.

2. At the outset, it is pertinent to note that there is substantial and unexplained delay in challenging the Impugned Order which is passed as far back as on 28.01.2016. The only contention raised is that the Suit was not dismissed in the absence of plaintiff or his Counsel and, as such, the application for restoration filed under Order IX Rule 9 of CPC was not maintainable. It is submitted that the Order of dismissal of the Suit would be relatable to the powers under Order XVII Rule 3 of CPC. The learned Counsel for the petitioners does not dispute that this aspect was not raised in the reply opposing the application for restoration. However, there is a reference to the said contention in the written arguments.

3. Without going into the merits, I find that having regard to the delay in filing of the petition and the further fact that there is no manifest injustice which can be said to be caused to the petitioners by restoration of the Suit (as the petitioners would get an opportunity to contest the Suit on merits), I am not inclined to interfere under Article 227 of the Constitution of India. (See Judgment of ***Shalini Shyam Shetty versus Rajendra Shankar Patil: (2010) 8 SCC 329***). The petition is, accordingly, dismissed.

C. V. BHADANG, J

msr.