

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 552 OF 2017

MR. OSCAR LEAL GARCIA AND ANR., ... Petitioners
Versus
MR. DORIANO MALTAGLIATI, REP. THR.
THEIR ATT. MICHEAL LOBO AND ANR., ... Respondents

Adv. Anthony Joe D'Silva for the Petitioners.

Coram:- C. V. BHADANG, J.

Date:- 26th July, 2017

Oral Order:

On 21/6/2017, a notice for final disposal was issued in this case. In spite of service of the notice none appears for the respondents. As such, the petition is taken up for final disposal.

2. The petitioner, who is the plaintiff in R.C.S No.107/11/A on the file of the learned Civil Judge Junior Division at Mapusa is challenging the order dated 6/8/2015 by which the application for amendment filed by the respondents/defendants for amendment of their counter claim/written statement has been allowed. The petitioner is also challenging the subsequent order dated 2/6/2017, by which, the application for recall of the order dated 6/8/2015 has been dismissed.

3. The brief facts are that, the petitioners have filed the

aforesaid suit inter alia for declaration that the lease agreement dated 27/3/2009 is null and void and for consequential reliefs of damages etc. The respondents/ defendants have filed a counter claim seeking a declaration that the lease agreement is valid and for restitution and some consequential reliefs.

4. The respondents filed an application on 20/1/2015 (Exhibit D-46) for amendment of their counter claim/written statement. That application was allowed by the learned trial court on 6/8/2015, on which date there was no appearance on behalf of the petitioners. The order dated 6/8/2015 records that the petitioners have abandoned the suit. The order also records that the application for amendment filed by the respondent is allowed and at the same time directs the petitioners to be served with a copy of the 'amended application'. It is difficult to understand as to how once the application is allowed, a copy of the amendment application was directed to be served on the petitioners. Be that as it may, the perusal of the order sheet from 20/1/2015 till 17/6/2015 does show that the plaintiff no.1 was attending the proceedings in the suit. Thus it cannot be accepted that the petitioners/plaintiffs had abandoned the suit, as has been recorded in the order dated 6/8/2015. In so far as the order dated 2/6/2017 refusing to recall the earlier order is concerned, the trial court has found that the petitioners had sought time to file additional written statement to the amended counter claim. This

is one of the reasons given for refusing to recall the order. However, I find that immediately after passing of the order dated 6/8/2015 an application for recall was made and there are no circumstances on record to suggest that the petitioners had acquiesced in the impugned order. Be that as it may, it is apparent from the record that the application for amendment was allowed behind the back of the petitioners and thus it would be appropriate if the trial court decides the application afresh. Thus the petition is allowed. The impugned orders are hereby set aside. The application Exhibit D-46 is restored back to the file of the learned trial court for deciding it afresh in accordance with law and after hearing the parties.

C. V. BHADANG, J.

ap/-