

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 644 OF 2017**

Surabhi Settlement,
R/o F/12, Sapana Chambers,
Ascanio Costa Road,
Margao-Goa.

.... Petitioner

V e r s u s

1. Smt. Tarmati Kurtikar,
Wife of late Harichandra Kurtikar,
76 years of age, agriculturist,
H. No.22, Ponsule, Dharbandora-Goa,
Through Power of Attorney,
Shri Sagum Harichandra Kurtikar,
H. No.22, Ponsule, Dharbandora, Goa.

2. M/s. Mayne & Co.,
Amora, Salcete-Goa.
(The addressees are Regd. Addresses)

.... Respondents

Shri R. G. Ramani, Advocate for the Petitioner.
Shri F. Andrade, Advocate for the Respondents.

CORAM: C. V. BHADANG, J.
DATE: 22ND AUGUST, 2017.

ORAL JUDGMENT:

Rule, made returnable forthwith. The learned counsel for the respondent no.1 waives service. In the present case respondent no.1 is the only contesting respondent being the original appellant. As such, the service of Rule on the second respondent is dispensed with.

2. The petitioner, is respondent no.1 before the trial Court. By the impugned order dated 9/6/2017 the trial court has refused to take the reply of the petitioner on record as the petitioner has failed to file the reply inspite of last and final opportunity.

3. The brief facts are that the respondent no.1 has filed a Tenancy case against the petitioner and the second respondent for declaration as a tenant in respect of the subject property. The petitioner was served with the summons on 29/6/2016 and the first date of appearance was 8/7/2016. The petitioner sought time to file reply on more than one occasion and was granted last opportunity on 21/4/2017 and the Tenancy Case was fixed on 9/6/2017. Even on that date, the petitioner orally sought time to file reply, which prayer was rejected, which brings the petitioner to this Court.

4. I have heard Shri Ramani, the learned counsel for the petitioner and Shri Andrade, the learned counsel for the first Respondent.

5. It is true that the petitioner did not file the reply promptly and the petitioner could have acted with more diligence. However, the record discloses that the second respondent was also not served and in fact he was only served on 20/2/2017. Although strictly speaking the service of the

second respondent was not necessary for the petitioner to have filed the reply, the fact remains that the application could not have proceeded in the absence of service of the second respondent. It is trite that normally the Court would prefer a decision on merits than on technicalities. Considering the overall circumstances, I find in the interest of justice and fair trial, the petitioner can be afforded an opportunity to file a reply subject to the condition of payment of costs. In such circumstances, the petition is allowed. The impugned order is set aside. The petitioner is permitted to file reply within two weeks from today subject to payment of costs of Rs.10,000/- (Rupees ten thousand only) to the respondent. Rule is made absolute in the aforesaid terms.

C. V. BHADANG, J.

Ap/