

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 964 OF 2016

JOAO FRANCISCO PINTO AND 3 ORS., ... Petitioners
Versus
SHRI. PLACIDO PINTO (DEC) THR.
LRS., THR. POA MR. ELÍAS I. PINTO
AND 13 ORS., ... Respondents

Shri Sudesh Usgaonkar, Advocate for the Petitioners.
Shri V. Menezes, Advocate for the Respondents No.1(a) to 1(n).
Shri Tarshish Pereira, Advocate for Respondents No.4(a) to 4(d),
5 to 14.

Coram:- F. M. REIS, J.

Date:- 30th March, 2017

ORAL ORDER :

Heard Shri Sudesh Usgaonkar, the learned Counsel appearing for the petitioners, Shri V. Menezes, the learned Counsel appearing for the respondents no.1(a) to 1(n) and Shri T. Pereira, the learned Counsel appearing for the respondents no.4(a) to 4(d), 5 to 14.

2. The challenge in the above petition is to an order passed by the Lower Appellate Court whereby the condonation of delay for filing an application for restoration of the suit came to be allowed.

3. Shri Sudesh Usgaonkar, the learned Counsel appearing for

the petitioner has vehemently argued that the delay has not been satisfactorily explained. It is further submitted that the allegations in the application are very vague and though it is contended that there was a misinterpretation of the order passed by this Court at the instance of the advocate, there is no affidavit of the advocate to support such contention. It is also submitted that after the Writ Petition was disposed off by this Court there was further delay on the part of the respondents in filing the application under Order 9 Rule 13 of the CPC within the time permitted by this Court. The learned Counsel further submitted that the conduct of the respondent does not justify any discretion to be exercised in favour of the respondent and, as such, the Lower Appellate Court has erroneously interfered with the well reasoned order passed by the learned Trial Judge dismissing the application for condonation of delay.

4. On the other hand, Shri V. Menezes, the learned Counsel appearing for the respondents points out that pursuant to the disposal of the Writ Petition No.382/2011 dated 30/08/2011 the respondents were directed to deposit costs of Rs.20,000/- before the learned Trial Court and permitted to file an application for restoration. It is further pointed out that pursuant thereto such costs were in fact deposited and, as such, in view of the advice by the then advocate that upon deposit of such costs the matter would be restored, the respondents had an impression that there

was nothing else to be filed for the purpose of proceeding with the suit. The learned Counsel further points out that only thereafter when another advocate perused the file he was informed that an application for restoration of the suit and condonation of delay had to be filed in terms of the provision of Order 9 Rule 9 of the CPC. The learned Counsel further points out that admittedly the order dismissing the suit was passed on 7/04/2010 and an appeal was preferred before the Lower Appellate Court within the time prescribed of 30 days. It is also not in dispute that all such proceedings were initiated in good faith before a wrong forum without jurisdiction as held by this Court while disposing off the Writ Petition. The learned Counsel further pointed out that the Lower Appellate Court has rightly exercised discretion and, as such, the above petition be rejected.

5. Upon hearing the learned Counsel for the respective parties, admittedly the effect of the impugned order is that the application for condonation of delay to file an application for restoration of suit has been allowed. The Lower Appellate Court has accepted the explanation of the respondents that on account of misinterpretation of the consequences of the order passed by this Court the application for restoration was not filed expeditiously. The Lower Appellate Court has also noted that the question of asking the advocate to file an affidavit would not be justified in the facts and circumstances of the case. The costs

of Rs.20,000/- as directed by this Court whilst disposing the writ petition to enable the petitioner to file such application have admittedly been deposited. As such the discretionary order passed by the Lower Appellate Court to advance the costs of justice cannot be interfered by this Court in our extraordinary jurisdiction under Article 227 of the Constitution of India. The impugned order ultimately has advanced the cause of justice and the discretion cannot be said to have been exercised erroneously and, as such, there is no reason for interference in extra ordinary jurisdiction of this Court under Article 227 of the Constitution of India. Hence, I find no reason to interfere in the impugned order. The petition stands accordingly dismissed.

F. M. REIS, J.

NH