

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 764 OF 2017

Mrs. Velintia Fernandes,
w/o late Philip Fernandes,
major-in-age, housewife,
r/o Resident of Yeshwant Nagar,
Shankar Apts., Flat No.202,
Vakola, Santa Cruz East,
Mumbai - 400055
represented
Through her duly Constituted
Power of Attorney,
Mr. Merwyn Pereira,
s/o Mr. Eustace Pereira,
aged 40 years,
r/o. H. No.175, Church Street,
Cortalim, Goa.

.... Petitioner

Versus

Mrs. Veronica Vaz alias
Veronica Pereira,
Widow of late Thomas Pereira,
Aged 65 years, widow, housewife,
r/o. H. No. 440, Abade Faria Road,
Margao, Goa
Through her Power of Attorney
Shri James Pereira,
Son of late Thomas Pereira,
r/o H. No. 440, Abade Faria Road,
Margao, Goa.

2. Mrs. Carrol Fernandes e Pereira
Daughter of late John Fernandes,
Aged 38 years, married, service,
Resident of Yeshwant Nagar,
Shankar Apts., Flat No. 202,
Vakola, Santa Cruz East,
Mumbai - 400055

3. Mrs. Cecilia Fernandes,
Daughter of late John Fernandes,
Aged 40 years, service,
Resident of Yeshwant Nagar,
Shankar Apts., Flat No. 202,
Vakola, Santa Cruz East,

Mumbai - 400055.

4. Mr. Clive Fernandes,
Son of late John Fernandes,
Aged 36 years, service,
Resident of Yeshwant Nagar,
Shankar Apts., Flat No. 202,
Vakola, Santa Cruz East,
Mumbai - 400055.

.... Respondents

Mr. Cliff Fernandes, Advocate for the Petitioner.

Mr. Joaquim Godinho, Advocate for the Respondent no. 1.

Coram :- C. V. BHADANG, J
Date : 07th November, 2017.

ORAL JUDGMENT:

Rule made returnable forthwith. Shri Godinho, the learned Counsel waives service on behalf of Respondent no. 1 who is the only contesting Respondent being the original Plaintiff. Heard finally by consent of parties.

2. The challenge in this petition under Article 227 of the Constitution of India, is to the Order dated 29.07.2017 passed by the learned Civil Judge Junior Division at Vasco-da-Gama in Regular Civil Suit no. 10/2014/D. By the impugned order the application filed by the Petitioner [original Defendant no. 4(a)] for condonation of delay in filing the written statement has been dismissed.

3. On hearing the learned Counsel for the parties, I find that the petition can be disposed of on a short ground. The original Defendant no. 4 who was the husband of the Petitioner died somewhere in August,

2016 and after his death the present Petitioner was impleaded as his legal representative on record. It is further a matter of record that the original Defendant no. 4 had already filed a written statement in the Suit on 15.04.2014. In so far as the application for condonation of delay in filing the written statement is concerned, the only ground taken by the Petitioner was that the Petitioner was unable to take out a computer printout of the written statement on 10.02.2017 on which date the Suit was fixed for filing of written statement. This, the learned Trial Court has disbelieved, on the ground that the copy of the written statement was not annexed to the application for condonation of delay which was filed on 08.06.2017.

4. In my considered view the reason as articulated by the learned Trial Court cannot be accepted. Only because the application for condonation of delay was not accompanied by a copy of the written statement, is not sufficient to disbelieve the case of the Petitioner that she was unable to obtain the computer printout of the written statement on 10.02.2017. That apart, the original Defendant no. 4 had already filed written statement and the Petitioner has been brought on record as the legal representative of the Defendant no. 4 under the provisions of Order XX Rule 4 of the Code of Civil Procedure ('Code' for short). Shri Godinho, learned Counsel for the Respondent no. 1 has brought to my notice the decision of this Court in the case of ***Nilkanth Pandurang Wath & Ors v/s. Amarkanth Pandurang Wath 2017(1) ALL MR***

819 in which this Court in similar circumstances had held that the written statements can be permitted to be brought on record only in the capacity as the legal representative of the original deceased Defendant. This is also clear as per the provisions of Order XX Rule 4(2) of the Code which says that a legal representative can take defence appropriate to the character as a legal representative of the deceased Defendant.

5. Considering the overall circumstances, I find that the written statement can be permitted to be placed on record subject to certain conditions. In view of this, the Petition is allowed. The Petitioner is permitted to file the written statement subject to the following clarification:

(i) The written statement filed by the Petitioner is permitted to be taken on record only in the capacity of the Petitioner being the legal representative of the Defendant no. 4 and in the light of the stand taken by the Defendant no. 4 in his written statement dated 15.04.2014.

(ii) Any diverse and independent pleas, if taken in the written statement of the Petitioner, shall not be permitted.

6. Rule is made absolute in the aforesaid terms with no order as to costs.

C. V. BHADANG, J

msr.