

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 1008 OF 2016

MR. SADANAND RAGHUVIR LOTLIKAR AND
5 ORS., ... Petitioners
Versus
MR. ANIL GOVIND LOTLIKAR AND ANR., ... Respondents

Shri Abhay Nachinolkar, Advocate for the Petitioners.

Coram:- C. V. BHADANG, J.

Date:- 5th January, 2017

ORAL ORDER:

Heard Shri Nachinolkar, the learned Counsel for the petitioners. None appears for the respondents, though served.

2. The petitioners, who are the defendants in Special Civil Suit No.26/2010/I, on the file of the learned Additional Civil Judge Senior Division at Margao, are challenging the order dated 03.10.2016, by which the learned Trial Court has refused to close the evidence of the respondents-plaintiffs and has refused to dismiss the suit for want of prosecution.

3. It is contended on behalf of the petitioners that the suit has been adjourned on several occasions, for the plaintiffs to lead evidence and inspite of a final opportunity being granted on 11.07.2016, the respondents had not filed their affidavit in lieu of chief examination. It was in these circumstances that the

petitioners sought for an order of closing of evidence of the respondents and the suit being dismissed, for want of prosecution.

4. The learned Trial Court has noticed two reasons for the delay on the part of the respondents for leading evidence, namely (i) the mining leases were cancelled upon a judgment of the Hon'ble Supreme Court and the plaintiff was in correspondence with the government as to the status of renewal of leases and (ii) inquiry in an inventory proceeding, in which the respondents are parties are being taken up on day to day basis as per the directions of this Court. After noticing this, the learned Trial Court has found that the petitioners after allowing the suit to be adjourned "without much objection and the matter being allowed to drift and suddenly caught the plaintiff by surprise".

5. It is contended on behalf of the petitioners that there are no particulars given by the respondents as to what is the correspondence in which they are engaged with respect to the renewal of the leases. It is submitted that the petitioners are not party to the inventory proceedings. It is submitted that even otherwise, if, there are some other proceedings being conducted on day to day basis, it cannot be a ground to adjourn the suit.

6. I have carefully considered the rival circumstances and the

submissions made on behalf of the petitioners. The suit is of the year 2010 and as such, has to be proceeded expeditiously. It is submitted on behalf of the petitioners that there are more than about 20 adjournments sought on behalf of the respondents for filing the affidavit in lieu of chief examination. If that be so, certainly, it is for the Trial Court to ensure that the plaintiff acts with due expedition. Because there is some other case (which is being conducted on day to day basis), cannot by itself be a ground for grant of repeated adjournments in the suit. However, in view of the limited scope for interference available under Article 227 of the Constitution of India, I am not inclined to interfere with the impugned order. It is now well settled that unless and until, it is shown that the impugned order has resulted into manifest injustice, this Court would be slow to interfere with the order passed by the Trial Court (see the case of SHALINI SHYAM SHETTY & ANOTHER Vs. RAJENDRA SHANKAR PATIL, reported in (2010) 8 SCC 329). However, the proceedings in the suit are required to be expedited.

In such circumstances, the petition is disposed of with a direction to the Trial Court to proceed with the suit as expeditiously as possible.

C. V. BHADANG, J.

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