

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 1047 OF 2016**

Smt. Laxmi Zipro Gaonkar, w/o late Zipro Fato Gaonkar, Age 43 years, Housewife, Resident of H. No. 100, Khalcha wada, Pal, Sattari-Goa.

.... Petitioner

Versus

1. Mr. Dasharath D. Gaonkar, s/o Mr. Dulo Gaonkar, Major in age, married, Resident of H. No. not known, Pali, Thane, Sattari-Goa.
2. Vasu Dulo Gaonkar, s/o Mr. Dulo Gaonkar, Major in age, married, Resident of H. No. not known, Pali, Thane, Sattari-Goa.
3. Mr. Dnyaneshwar V. Gaonkar, s/o Mr. Vithoba Gaonkar, Major in age, married, Resident of H. No. not known, Pali, Thane, Sattari-Goa.
4. Mr. Prashant K. Sawant, Major in age, married, Resident of H.No. not known, Pali, Thane, Sattari-Goa.
5. Mr. Santosh A. Sawant, s/o Mr. Appulla Sawant, Major in age, married, Resident of H.No. not known, Resident of Pali, Thane, Sattari-Goa.

.... Respondents

Ms. Smita S. Gawas, Advocate for the Petitioner.

CORAM:- C. V. BHADANG, J.

DATE:- 27th JANUARY, 2017

ORAL JUDGMENT:

On 11.11.2016, a notice for final disposal was issued to the respondents, however, none appears for the respondents, though served. I have heard the learned Counsel for the petitioner and the petition is being disposed of finally.

2. The petitioner is the original plaintiff in Regular Civil Suit No. 16/2014, pending on the file of the learned Civil Judge Junior Division, Sattari at Valpoi. By an order dated 16.06.2016, the evidence of the plaintiff was closed by the learned Trial Court. The petitioner filed an application (Exhibit-51), for recalling the order dated 16.06.2016, which application has been dismissed by impugned order dated 02.08.2016. Hence, this petition.

3. While issuing notice, this Court had directed the petitioner to deposit Rs.5,000/- towards security of costs. The learned Counsel for the petitioner states that the amount is deposited before the Trial Court. The statement is accepted.

4. It is submitted by the learned Counsel for the petitioner that on 16.06.2016, the petitioner was unwell and had therefore, sought adjournment by filing an application (Exhibit-50), which was rejected by the Trial Court on the ground that the medical certificate was not produced.

5. It appears that the petitioner had filed an application on 02.06.2016, seeking adjournment on the ground that she is not well and hence, was unable to appear before the Court. It appears that the learned Trial Court had granted time to produce the medical certificate. However on 16.06.2016, the learned Trial Court dismissed the application for adjournment and closed the evidence of the plaintiff. In the impugned order dated 02.08.2016, the learned Trial Court has noticed various dates on which the suit was adjourned and has therefore found that multiple opportunities were granted to the petitioner, inspite of which, the petitioner has failed to lead evidence. In that view of the matter, the application (Exhibit-51), for recall of order dated 16.06.2016, has been dismissed.

6. On hearing the learned Counsel for the petitioner and on perusal of the record, it does appear that the petitioner could have acted in greater expedition. However considering the fact that the application for adjournment was supported by an affidavit and in the interest of justice and fair trial, an opportunity can be granted to the petitioner to lead evidence in the suit, subject to costs of Rs.5,000/-, which is already deposited before the Trial Court. The learned Counsel for the petitioner undertakes that no further adjournment or time shall be sought to lead evidence.

7. In such circumstances, the following order is passed:

(a) The petition is allowed.

(b) The impugned orders dated 16.06.2016 and 02.08.2016, are hereby set aside.

(c) The learned Trial Court shall permit the petitioner to lead further evidence on the date to be fixed by the Trial Court.

(d) The petition is disposed of in the aforesaid terms.

C. V. BHADANG, J.