

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 598 OF 2017

REX PERPET D\SOUZA AND 2 ORS., ... Petitioners

Versus

ANTONIO BRAGANZA, THR. HIS POA
ALDILA BRAGANZA AND 3 ORS., ... Respondents

Mr. Devidas J. Pangam, Advocate for the Petitioners.
None for respondent no.1.
Mr. Deepak Gaonkar, Advocate for respondents no.2 and 4.

Coram:- PRITHVIRAJ K. CHAVAN, J.

Date:- 11th January 2018

P.C.

1. Heard Mr.Pangam, learned counsel for the petitioners.
2. The respondent, who is an original plaintiff, filed Special Civil Suit No.20/2013/B in the Court of Civil Judge, Senior Division, Mapusa. After closing of evidence of respondent no.1, the matter was adjourned for filing an affidavit of petitioner no.1-original defendant no.1. The learned trial Court granted adjourned on 21.10.2016 and thereafter on 14.11.2016 granting liberty to the petitioner to file affidavit-in-evidence during the course of the day. The petitioners filed an application for time to file affidavit-in-evidence on 23.11.2016. The learned trial Judge was on leave from 21.12.2016 to 9.1.2017 and therefore, the matter was adjourned to 3.3.2017. The evidence of the

petitioners was closed on 3.3.2017, as the petitioner sought time to file affidavit-in-evidence on the ground of sickness of petitioner no.1 who is also an aged person. On 22.3.2017 the petitioners had filed an application for recall of the order dated 3.3.2017. The learned trial Court by the impugned order dated 10.4.2017 dismissed the application for recall.

3. Para 10 of the affidavit in reply filed by respondent no.1 reads thus:

"Therefore it is humbly submitted before this Hon'ble court that if the petitioner wants to file yet another false affidavit in chief is entirely his choice, but the petitioner may be directed to file the same through a firm date, to be fixed by this Hon'ble Court preferably in the month of January 2018, as the power of attorney of the respondent no.1 has to shortly attend to her ailing husband in the UK who is undergoing kidney treatment and, for the petitioner to positively file his correct affidavit in chief before the trial court without taking any further adjournments for proper carriage of proceedings."

4. It is apparent from the reply of respondent no.1 that she has no objection for permitting the petitioner to file an affidavit in lieu of examination in chief. Nevertheless, it is apparent from the impugned order that the petitioners had sought adjournment sans

any documentary evidence to show the physical inability or illness of the petitioner to attend the Court or to file an affidavit. It is well settled that procedure is a handmade of justice and, therefore, what is required to be seen is that substantial justice has to be made between the parties in a lis and, therefore, the impugned orders need to be set aside and is accordingly set aside.

5. The petitioners are directed to lead evidence positively on 24.1.2018 and shall make endeavor to examine their witnesses without seeking unnecessary adjournments. The petitioners shall pay costs of Rs.5000/- to respondent no.1 on or before 24.1.2018.

6. The petition stands disposed of in the aforesaid terms.

PRITHVIRAJ K. CHAVAN, J.

mukund