

IN THE HIGH COURT OF BOMBAY AT GOA**MISC.CIVIL APPLICATION NO. 479 OF 2018****IN****MISC.CIVIL APPLICATION NO. 75 OF 2018****RAMAKANT GAJANAN NAIK PRATAPRAO****SARDESSAI (DEC) AND 8 ORS.,****... Applicants****Versus****THE GOVERNMENT OF GOA, REP. BY ITS****CHIEF SECRETARY AND 29 ORS.,****... Respondents**

Adv. R. G. Ramani with Adv. P. Kakodkar for the Applicants.

Ms. S. Linhares, Addl. Government Advocate for the Respondents no.1 to 4.

Coram:- C. V. BHADANG, J.

Date:- 8th August 2018.

P.C.:

This is an application for exempting the applicants from substituting the legal representatives of the deceased respondent nos.23 (defendant no.23) on record.

2. It appears that the applicants had filed civil suit no.38/2010 against the respondents on 24/6/2010 arraying as many as 29 defendants. The defendant no.23 i.e. Mr. Subash Ramakant Gaonkar died during the pendency of the suit on 6/6/2011. However, his death went unnoticed and the suit was eventually dismissed on 26/11/2015. The applicants intend to challenge the judgment and decree of dismissal of the said suit by filing an appeal in which there is a delay. Misc. Civil Application no.75/2018 is filed for condonation of delay in

filing the appeal, in which the present application is filed for exempting the applicants from arraying the legal representatives of the deceased respondent no.23 (defendant no.23) on record on the ground that the defendant no.23 had not filed written statement nor contested the suit and and was proceeded ex parte. In fact, the record discloses that except the defendant no.23, all other defendants were proceeded ex parte.

3. Order XXII Rule 4 (4) of C.P.C. reads thus:

4.Procedure in case of death of one of several defendants or of sole defendant- (1) where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representatives of the deceased defendant to be made a party and shall proceed with th suit.

(2) -

(3) -

(4) The Court whenever it thinks fit, may exempt the plaintiff from the necessity of substituting the legal representatives of any such defendant who has failed to file a written statement or who, having filed it, has failed to appear and contest the suit at the hearing, and judgment may, in such case, be pronounced against the said defendant notwithstanding the death of such defendant and shall have the same force and effect as if it has been pronounced before death took place.

4. It can thus be seen that in an appropriate case if the Court thinks it fit, may exempt the plaintiff from the necessity of substituting the legal representatives of such defendant who has failed to file the written statement or who, having filed it, has failed to appear and contest the suit at the hearing. Evidently no such application was filed before the trial court, as according to the learned counsel for the applicants, the death of defendant no.23 went unnoticed. As noticed earlier, it is a matter of record that during his life time, defendant no.23 did not file any written statement nor contested the suit at the hearing. In that view of the matter and in view of the provisions of Order XXII Rule 4 (4) C.P.C the applicants are exempted from substituting the legal representatives of deceased respondent no.23 on record. The application is disposed off in the aforesaid terms.

C. V. BHADANG, J.

Ap/-