

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.363 of 2018**

1. Mr. John Cruzinho Gonsalves
s/o late Rafeal Felix Gonsalves
aged 46 years, married, business
and his wife;
2. Mrs. Philomena Antoneta 'Silva e
Gonsalves d/o late Anthony Francis
D'Silva aged 42 years, married,
housewife;
3. Miss Christalina Rosevita Gonsalves
d/o. late Rafeal Felix Gonsalves
aged 51 years, spinster service.
4. Mr. Pascoal Xavieriano Gonsalves
s/o. late Rafeal Felix Gonsalves
aged 43 years, bachelor unemployed
All resident of Flat No.S-2, 2nd
Floor Alleluia Apartments Ponda
Road, Fatorda, Margao,
Salcete, Goa
5. Mr. Andrew Jose Gonsalves
s/o. late Rafeal Felix Gonsalves
aged 49 years, married, business
and his wife;
6. Mrs. Antoneta Fernandes e Gonsalves
d/o. Rafeal Fernandes
aged 44 years, married, housewife
and both r/o. Housing Board
Gogol, Margao, Salcete, Goa
7. Mrs. Lorna Succorina Gonsalves e
D'Souza d/o. Rafeal Felix Gonsalves
aged 42 years, married, housewife
and her husband;
8. Mr. Anthony D'souza
s/o late Olga D'Souza
aged 46 years, married, business
and both r/o H.No opposite

PWD Fatorda Margao,
Salcete, Goa.
The plaintiffs 2 to 8 are
represented herein by their
constituted attorney
John Cruzinho Gonsalves
i.e. the plaintiff no.1. .. Petitioners

Vs.

1. Mr. Prakash R. Pote
s/o late Rasikumar Pote
major in age, married
business and his wife;
2. Mrs. Pratiksha Pote
Major in age, married
Housewife and both residing
At H. No.220/A, Arlem,
Raia, Salcete, Goa .. Respondents.

Shri C. A. Coutinho, Advocate for the petitioners.

Shri Nigel D'Costa Frias and Ms. L. Sawant, Advocates for the respondents.

CORAM :- C. V. BHADANG, J.

Date : 10th July, 2018

ORAL JUDGMENT :

Leave to correct the prayer clause to challenge both the orders dated 25/07/2017 is granted. Necessary correction to be carried out forthwith.

2. Rule, made returnable forthwith. The learned Counsel for the respondent nos.1 and 2 waives service. Heard finally by

consent of parties.

3. The petitioners are challenging the order dated 14/06/2017 and two orders dated 25/07/2017 passed by the learned Trial Court, whereby the evidence of the petitioners/plaintiffs is closed and the suit has been dismissed for non-prosecution. It appears that on 14/06/2017, an oral request was made for an adjournment on the ground that the Advocate for the petitioners, who was in her advanced stage of pregnancy, was unable to attend the Court. The learned Trial Court refused to grant adjournment on the ground that the suit is of the year 2012 and is under directions for expeditious disposal and on earlier occasions, there were adjournments granted to the petitioners. It further appears that the petitioners filed an application for recall of the order on 30/06/2017, which application came to be rejected on 25/07/2018 and by a separate order, the suit came to be dismissed for non-prosecution.

4. I have heard Shri Coutinho, the learned Counsel for the petitioners and the learned Counsel appearing for the respondents. Perused the orders.

5. Shri Coutinho, the learned Counsel for the petitioners

has submitted that the petitioners could not lead evidence on 14/06/2017 on the ground of the reasons, beyond the control of the petitioners, in as much as the Advocate for the petitioners was unable to remain present on account of her personal difficulty. It is submitted that the concerned Advocate has filed an affidavit claiming that on account of her advanced stage of pregnancy, she could not attend the Court. Therefore, an application for recall of the order was made on 30/06/2017, which has also been dismissed, followed by the dismissal of the suit for non-prosecution. On behalf of the petitioners, reliance is placed on the decision of the Supreme Court in the case of ***State Bank of India Vs. Km Chandra Govindji***; 2001(1) All MR 765 , in order to submit that adjournment cannot be refused simply for the reason that number of adjournments have been granted earlier. It is submitted that the Court should look to the ground on the date on which the adjournment is sought, to see whether the case for grant of adjournment is made out.

6. The learned Counsel for the respondents submits that several adjournments were granted to the petitioners and there was no sufficient cause made out for grant of an adjournment on 14/06/2017 as the affidavit of the concerned Advocate is not supported by any medical papers.

7. I have given my anxious consideration to the circumstances and the submissions made.

8. The suit is of the year 2012 and there are general directions for expeditious disposal of the suit, which are 5 years old. The record also discloses that prior to 14/06/2017, there were adjournments sought and granted by the Court and in such circumstances, it was expected of the petitioners to lead the evidence and to assist the Court for expeditious disposal of the suit. However, looking to the ground, which was made out for seeking adjournment on 14/06/2017, it does appear that the Advocate for the petitioners was unable to remain present on account of her advanced stage of pregnancy and an affidavit to that effect is sworn by the concerned Advocate. I do not see any reason to disbelieve the contents of the affidavit on the ground that it is not supported by any medical papers. At least, there is nothing on record to show that the respondents had claimed that the contents of the affidavit are incorrect. Although strictly speaking no fault can be found with the learned Trial Court for insisting for expeditious disposal of the suit, I find that in the interest of justice, an opportunity needs to be granted to the petitioners to lead evidence. In my considered view, the petition

can be allowed, subject to costs. In the circumstances, the following order is passed :

- (i) The petition is allowed.
- (ii) The impugned order dated 14/06/2017 and the two orders dated 25/07/2017 are hereby set aside.
- (iii) Regular Civil Suit No.309/2012/II is restored to the file of the learned Ad hoc Senior Civil Judge at Margao, subject to the petitioners paying costs of Rs.15,000/- to be paid within two weeks.
- (iv) Payment of costs is condition precedent for restoration of the suit.
- (v) The petitioners shall ensure that they lead evidence on the next date of the hearing or any other date to which, the suit is adjourned by the Trial Court.
- (vi) Parties to appear before the learned Trial Court on 06/08/2018 at 10.00 a.m.
- (vii) Rule is made absolute in the aforesaid terms.

C. V. BHADANG, J.

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