

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 281 OF 2019**

Jessica Veriato Rodrigues Petitioner
Versus
Ana Karenina Pinto & 28 Others Respondents

Mr. Vedraj Toraskar, Advocate for the Petitioner.

Mr. C.A. Coutinho, Advocate for the Respondent Nos. 2 and 3.

CORAM : C.V. BHADANG, J.

DATE : 24th April, 2019

ORAL ORDER:

By this petition, the petitioner-original defendant no. 3, is challenging the order dated 14.01.2019, below Exhibit-D/66, passed by the learned Trial Court, refusing to re-open the evidence of the petitioner.

2. The brief facts are that the first respondent-plaintiff has filed Regular Civil Suit No. 335/2012/D, against the respondent nos. 2, 3 and others, for declaring the preliminary decree dated 11.08.2010 and final decree dated 24.06.2011, passed in Regular Civil Suit No. 255/1999, as null and void and for setting aside the same and other consequential reliefs. In that case, the first respondent-plaintiff, who happens to be the

real sister of the petitioner, led her evidence, after which, the respondent nos. 2 and 3, who are respectively the defendant nos. 1 and 2 have also led their evidence. The petitioner failed to lead her evidence and her evidence was closed on 19.10.2018. The petitioner filed an application (Exhibit-D/66) on 26.11.2018, for re-opening the evidence, on the ground that on the date when the suit was fixed for her evidence, her Lawyer was out of station and was on an overseas trip on medical ground. Except this, there was no reason mentioned, nor the application was accompanied by any supporting document.

3. The first respondent gave no objection for the same, obviously, because there is no contest, inter-se between the petitioner and the first respondent, which is evident from the written statement filed by the petitioner before the Trial Court, in which, the petitioner has admitted the claim of the first respondent.

4. The application was opposed by the respondent nos. 2 and 3. It was contended that after the evidence of the first respondent was closed on 20.02.2018, the suit was fixed on 07.03.2018 and till 19.10.2018, the petitioner did not take any

steps to lead her evidence, on which date, the evidence of the petitioner was closed. It was pointed out that on the next date i.e. on 19.11.2018, the suit was fixed for final arguments. However, no application was filed for re-opening of the evidence. Thereafter, the suit was fixed on 26.11.2018, on which date, the application Exhibit-D/66 was filed. It was pointed out that Advocate V. Sardessai filed his appearance for the petitioner only on 24.08.2018, when the evidence of the respondent nos. 2 and 3 was in progress and when the first respondent had already closed her evidence. It was thus denied that the petitioner was prevented on account of any cause, as claimed in her application, from leading evidence.

5. The learned Trial Court found that the Advocate earlier representing the petitioner had stopped appearing in the suit after 2015. Application (Exhibit-D/66) was not supported by any affidavit, nor any supporting document to show that the Advocate was travelling abroad on medical ground. The learned Trial Court also found that the petitioner has admitted the case of the first respondent. For this reason also, the learned Trial Court found that there was no ground made out for reopening the evidence and dismissed the application.

6. I have heard Mr. Toraskar, the learned Counsel for the petitioner and Mr. Coutinho, the learned Counsel for the contesting respondent nos. 2 and 3. Perused record.

7. Mr. Toraskar, the learned Counsel for the petitioner submitted that in the interest of justice an opportunity needs to be granted to the petitioner to lead her evidence, as certain relevant facts, which have a bearing on the issues involved in the suit are within the personal knowledge of the petitioner. It is submitted that on account of the absence of the Advocate, the petitioner could not lead her evidence on 19.10.2018, which order needs to be recalled. Except this, there are no other contentions raised.

8. Mr. Coutinho, the learned Counsel for the contesting respondent nos. 2 and 3 has submitted that sufficient opportunity was granted to the petitioner to lead her evidence from 07.03.2018 till 19.10.2018. It is submitted that Advocate V. Sardesai had filed appearance on behalf of the petitioner only on 24.08.2018 and the application lacks material particulars, as also no document was produced to support the claim that the Advocate was travelling abroad on medical

ground. It is submitted that even otherwise, the petitioner has admitted the case of the first respondent and now, after the closure of the evidence of the respondent nos. 2 and 3, the petitioner cannot be allowed to lead evidence, which will cause prejudice to the respondent nos. 2 and 3.

9. I have considered the circumstances and the submissions made and I do not find that any case for interference is made out. As noticed earlier, a perusal of the written statement filed by the petitioner shows that she has admitted the case of the first respondent in its entirety. The petitioner was granted sufficient opportunity to lead evidence after the plaintiff closed her evidence on 20.02.2018 and till 19.10.2018, the petitioner did not lead her evidence. Even assuming that certain relevant facts, were within the knowledge of the petitioner, it was open to the petitioner to examine herself as a witness for the first respondent, in as much as, there is no inter-se contest, between the petitioner and the first respondent. Apart from the fact that there are no acceptable grounds made out and the application (Exhibit-D/66) is cryptic and is filed in a casual manner, there is one more reason, why the evidence of the petitioner cannot be allowed to be reopened at this stage. This is because, a

defendant, who is having no contest with the plaintiff has to lead his/her evidence, prior to the evidence of the contesting defendants. In the present case, the contesting respondent nos. 2 and 3 (who are defendant nos. 1 and 2 in the suit) have already led their evidence and for this reason also, the reopening of the evidence of the petitioner cannot be permitted. Looked from any angle, no case for interference with the impugned order is made out. The petition is without any merit and is accordingly dismissed, with no order as to costs.

C. V. BHADANG, J.

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