

IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO.35 OF 2019

AGNELO SANTOS VAZ AND
4 ORS.

... Appellants.

Versus

JOAO SANTAN VAZ AND 40 ORS

... Respondents.

Shri T. Pereira, Advocate for the appellants.

Shri M. D'Souza, Advocate for the respondent nos.1,2 5 to 10.

Shri B. Sardesai, Advocate for the respondent no.3 and 4.

Coram:- DAMA SESHADRI NAIDU, J.

Date:- 10th December 2019.

P.C.

The fourth respondent's affidavit-in-reply is taken on file.

2. The appellants, as the plaintiffs, filed Special Civil Suit No.36 of 2014, for declaration and other consequential reliefs. There were 41 plaintiffs and 10 defendants. After the issues were framed, when the trial was to begin, the plaintiffs applied to bring on record a third party. In that application, the trial Court ordered notice to the proposed defendant. Despite four adjournments, the plaintiffs could not pay the process fees. On the fifth occasion, the trial Court dismissed the very suit, instead of the interlocutory application.

3. Assailing that dismissal, the appellants have applied under Order 9 Rule 9 of CPC. I reckon the dismissal was under Order 9, Rule 2; so the restoration must have been under Rule 4 of the same

Order. Nevertheless, through its order, dated 29.1.2019, the trial Court dismissed that application and refused to restore the suit. Aggrieved, the appellants have filed this appeal against the order.

4. The learned counsel for the respondent nos.1, 2, and 5 to 10 has strenuously opposed the appellants' claim for restoration of the suit. According to him, the dismissal was under Order 9 Rule 2 of CPC. So, no appeal lies against it.

5. The learned counsel for the respondent nos.3 and 4 has submitted that the application for amendment—that is, to bring on record a third party—was dismissed, besides the very suit. So there ought to have been two orders and two challenges.

6. In response, the appellants' counsel counters the rival submissions. He asserts that in this appeal against the order, they have challenged both the orders: the order, dated 17.2.2017, and also the order, dated 29.1.2019.

7. I reckon the trial Court has erred in dismissing the very suit for the plaintiffs' failure to pay the process fees in an interlocutory application. At the most, the trial Court could have dismissed that interlocutory application; instead, it dismissed the suit. Keeping aside the technicalities, I hold that an error or omission on the court's part should not affect the parties to judicial proceedings.

8. The Common Law principle and the legal maxim *actus curiae neminem gravabit* is well-entrenched. In *Kalabharati Advertising v. Hemant Vimalnath Narichania*, (2010) 9 SCC 437, the Supreme Court has held that “the maxim *actus curiae neminem gravabit*, which means that the act of the Court shall prejudice no one, becomes applicable when a situation is projected where the Court is under an obligation to undo the wrong done to a party by the act of the Court.”

9. Here, the dismissal of the suit is unwarranted. But that leaves another question unanswered. Along with the suit, the interlocutory application, too, stood dismissed. And for its dismissal, the trial Court has its justification: the plaintiffs’ negligence in paying the process fee. So to that extent, the plaintiffs should earn its restoration. Indeed, they have explained in their application why they could not pay the process fee on time.

9. I, therefore, allow the appeal against orders, dated 17.2.2017 and 29.1.2019, subject to the appellants’ paying costs of Rs.5,000/- in Goa State Legal Services Authority’s favour in four weeks after this Order is uploaded.

First, the suit stands restored, with no condition attached. Second, the amendment or impleadment application stands restored once the appellants’ paying the costs. If the interlocutory application is

restored, trite to observe, the trial Court will consider it on the merits.

DAMA SESHADRI NAIDU, J.

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