

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 1172 OF 2018

BHAVANE BABULO GAUNKAR AND 6 ORS., ... Petitioners

Versus

DEVIDAS B. DEVARI AND 150 ORS., ... Respondents

Mr. J. Abreu Lobo, Advocate for the Petitioners.

Coram:- C. V. BHADANG, J.

Date:- 30th September, 2019

ORAL ORDER

The challenge in this petition is to the order dated 24.09.2018 (below exhibit 417-D), passed by the learned Senior Civil Judge, Ponda, in Special Civil Suit No.43/1987/A. By the impugned order, the learned Trial Court has refused to reopen the evidence of the defendant no.35 and to examine him on commission.

2. I have heard Mr. Lobo, the learned Counsel for the petitioner.

The respondent nos.1 to 28, who are the original plaintiffs and the contesting parties, have chosen not to appear though served.

3. A perusal of the impugned order shows that the suit being an old suit has mainly weighed with the Trial Court in refusing to reopen the evidence. The learned Trial Court has noted that there is a medical certificate in support of the claim filed by the

defendant nos.35. However, the Trial Court has found that such an application for examination of defendant no.35 on commission ought to have been filed two years earlier. The Trial Court has in such circumstances dismissed the application with costs of Rs.2,000/-.

4. It is true that being an old suit, the same has to be heard and disposed off expeditiously. However, merely because the application for examination on commission was not filed earlier may not be a reason to refuse such prayer. On behalf of the petitioner, reliance is placed on the decision of this Court in the case of STATE OF MAHARASHTRA VS. MAIMUNA BEGAM, AIR 1994 BOMBAY 353 in order to submit that as a general rule, evidence should not be shut out and fullest opportunity should be granted to the parties to lead evidence if it is required in the interest of justice. (See Para 13 of the judgment).

5. I have carefully considered the circumstances and the submissions made on behalf of the petitioners. It is true that the petitioners could have acted with greater expeditions and diligence, however, in my considered view, the application, exhibit 417-D, can be granted subject to costs of Rs.10,000/- payable to the North Goa State Legal Services Authority.

6. The petition is accordingly allowed. The impugned order is hereby set aside. Application, exhibit 417-D, is allowed, subject to costs of Rs.10,000/- to be paid/deposited with the District Legal Services Authority, North Goa, within three weeks from today. The deposit of the costs is a condition precedent for setting aside of the impugned order.

7. If the costs are paid/deposited, the Trial Court shall permit the defendant to be examined on commission at the cost of the petitioners.

C. V. BHADANG, J.

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