

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 227 OF 2019

TAHIR ISANI.,

... Petitioner

Versus

C. PINTO TRADE COMMERCE

PVT. LTD. AND ANR.,

... Respondents.

Shri Ajit R. Kantak and Shri R. Kantak, Advocates for the petitioner.

Coram:- DAMA SESHADRI NAIDU, J.

Date:- 17th February 2020

P.C.

The petitioner as a plaintiff filed Special Civil Suit No.16/2014/B before the Ad-hoc Civil Judge, Senior Division, Panaji, against the respondents for specific performance and other consequential reliefs. In the course of time, for non-prosecution the trial Court dismissed the suit. It was on 20.10.2016. Later, the petitioner filed a restoration petition, besides an application to have the delay of 106 days condoned. Eventually, the trial Court, through its order dated 26.10.2018, refused to condone the delay. Aggrieved the petitioner has filed this Writ Petition.

2. The learned counsel for the petitioner has submitted that there is miscommunication between the petitioner and his advocate, who later withdrew from the proceedings. Only under those circumstances did the petitioner remain unaware of the dismissal of the suit. He has urged

this Court to set aside the impugned order and condoning the delay, and to restore the case to the file.

3. None appears for the respondents, despite service of notice. After going through the impugned order, I reckon that the petitioner's justification for his non-appearance before the Court on the date fixed for hearing remains tenuous. That said, the suit was dismissed before the issues could be framed; no trial began. The petitioner, then, sought restoration in about three months. To me, the delay cannot be said to be inordinate. The Courts, as a matter of prudent policy, always desire to have matters disposed of on the merits rather than on technicalities. Lest the litigation should simmer, ready to boil over later.

4. Under these circumstances, only to ensure that the dispute gets proper adjudication and resolution on the merits do I set aside the impugned order. But it is subject to the petitioner's paying Rs.5000/- as cost to the respondents in two weeks after this order is uploaded. As a result, the delay stands condoned and the suit restored to the file. After paying the costs to the respondents, the petitioner will produce the receipt before the trial Court. Then the trial Court will proceed with the matter.

The Writ Petition stands disposed of accordingly.

DAMA SESHADRI NAIDU, J.

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