

IN THE HIGH COURT OF BOMBAY AT GOA

MISC.CIVIL APPLICATION NO. 5 OF 2020

IN

FIRST APPEAL NO. 100 OF 2019

SHANTI GULAB HEGDE (DEC) REP. BY
HER ATTORNEY, SUNIL GURUDAS
BHATIKAR.,

... Applicant

Versus

RATNABAI HEGDE AND 6 ORS.,

... Respondents

Shri Jayant Umesh Karn, Advocate for the applicant.

Shri Rohit Bras De'sa, Advocate for the respondents.

Coram:- DAMA SESHADRI NAIDU, J.

Date:- 9th September 2020

P.C.

In the Special Inventory Proceedings No.43/2014/I, the petitioner's testator was a party. Then the petitioner represented her as her power of attorney holder. Pending those proceedings, that testator died; the applicant came on record as the legatee. When, on 12.03.2018, he suffered an adverse order, the applicant appealed to this Court: First Appeal No.100/2019. This Court, through its judgment dated 4.10.2019, disposed of that appeal. While disposing of the appeal, this Court allowed the applicant to apply to the Inventory Court Section 395 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012. But this

Court wanted the applicant to apply to the Inventory Court on or before 8.11.2019.

2. The applicant's counsel informs me that on 8.11.2019, the applicant's counsel went late. By then, the third Additional Senior Civil Judge, Margao—that is, the Inventory Court—adjourned the matter. On the next date of hearing, on 16.11.2019, the applicant's counsel reported no instructions. The trial Court once again adjourned the case to 29.11.2019. On that date, the applicant's new counsel appeared and offered to apply, ostensibly, under Section 395 of the Act. But the other side objected to it because this Court permitted the applicant to file that application by 8.11.2019. Therefore, in the face of that objection, the trial Court refused to take the application on file. Aggrieved, on 5.12.2019, the applicant filed this MCA.

3. Heard Shri J. Karn, the learned counsel for the applicant, and Shri R. D'Sa, the learned Counsel for the respondents.

4. Indeed, in response to the submissions advanced by the applicant's counsel, the learned counsel for the respondents has strenuously objected to this Court's entertaining this MCA. According to him, there is no justification for the applicant not to have complied with this Court's direction. According to him, the negligence is a writ large.

5. First, after appreciating the matter on the matter in the First Appeal, this Court allowed the applicant to apply to the Inventory Court. True, this Court fixed a timeframe, too. Second, there was a delay. But the

circumstances that occasioned the delay do not *per se* reveal that there is any gross and unpardonable negligence on the applicant's part. Most of the procedural lapses, including any failure short of abandonment or contumaciousness, ought not to affect the substantial rights of the parties or the cause of justice. Therefore, the Courts have always adopted the device of mulcting the erring parties with costs. Money may earn a reprieve from many a procedural error, never the substantial justice though.

6. Under these circumstances, I extend the time this Court earlier fixed by six weeks from today. Before the period ends, the applicant must present before the Inventory Court whatever application he intends to file.

Thus, this CMA is allowed subject to the condition of the applicant's paying the cost of Rs.1000/- to the respondents in four weeks.

DAMA SESHADRI NAIDU, J.

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