

IN THE HIGH COURT OF BOMBAY AT GOA

MISC. CIVIL APPLICATION NO.32 OF 2020

IN

WRIT PETITION NO.67 OF 2016

SEBASTIAO FERNANDES,

THR. HIS WIDOW,

ANA CONEICAO GRACIAS

... Applicant

VS

ALEX D'COSTA AND 4 ORS.

... Respondents

Ms. Amina Shaikh, Advocate for the Applicant.

Mr. Sudesh Usgaonkar and Ms. R. Pereira, Advocates for the Respondents.

Coram : M. S. SONAK, J

Date : 20th July 2021

P.C.

Heard Ms. A. Shaikh, learned counsel for the Applicant and Mr. Sudesh Usgaonkar who appears along with Ms. R. Pereira for the Respondents.

2 The original Petitioner in this petition expired on 07.08.2018. His widow has now applied to bring herself on record in place of the deceased Petitioner and to pursue Writ Petition No.67 of 2016 since, there is a delay for filing an application seeking condonation.

3 Now if the reasons set out in the application are perused
then, according to me, sufficient cause has been made out to
condone the delay. The widow has claimed that she is unaware
about the pendency of this petition and it is only in the month of
November 2019 she came to know about the dismissal of the writ
petition as abated. The connected Writ Petition No.297 of 2018 is
still pending.

4 Mr. Usgaonkar, learned counsel for the Respondents
submits that the widow, in the facts of the present case cannot be
construed as a legal representative particularly she was not residing
in the suit hut/house, which is the subject matter of the litigation.

5 According to me, the aforesaid dispute cannot be
decided at this stage. The issue as to whether the Applicant/widow
is a proper legal representative or a relater to pursue the Writ
Petition No.67 of 2016 can be kept open and is hereby kept open.
This issue can be raised by the Respondents at the stage of final
hearing of the petition and will be considered in accord with the
law and on its own merits.

6 At this stage, however, it is too premature to hold that
the Applicant has no interest whatsoever in this matter or that she

should be precluded from even pursuing the Writ Petition No.67 of 2016.

7 Therefore, by keeping open the objections of Mr. Usgaonkar, the delay in setting aside abatement is condoned. The abatement itself is set aside and the Writ Petition No.67 of 2016 is hereby restored.

8 The Applicant to carry out necessary amendment to the cause title in the restored petition within two weeks from today.

9 Misc. Civil Application No.32 of 2020 is disposed of in the aforesaid terms.

M. S. SONAK, J

at*