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IN THE HIGH COURT OF BOMBAY AT GOA

Writ Petition No. 518 of 2019

FRANCISCO ANTONIO
RODRIGUES.,

PETITIONER

Versus

FLORY FERNANDES.

RESPONDENT

Mr. Deepak Gaonkar, Advocate for the Petitioner
Mr. V. Rodrigues, Advocate for the Respondent.

CORAM: MANISH PITALE, J

DATED: 5th October, 2021.

Oral Order:

1. Heard learned counsel for the rival parties.
2. By this Writ Petition, the petitioner (original plaintiff) has challenged order dated 13/5/2019 passed by the Court of Civil Judge, Junior Division, Margao, whereby an application for condonation of delay in filing the written statement at Exhibit D-25 has been granted and the written statement is directed to be taken on record.
3. According to the learned counsel appearing for the petitioner, the conduct of the respondent (original defendant) in the present case was such that the Court below ought not to have

shown leniency in allowing the application for condonation of delay in filing the written statement.

4. It was brought to the notice of this Court that the respondent was served with notice in the pending suit as far back on 23/5/2018 and despite appearance through counsel on the very next day, the respondent failed to file written statement within the stipulated period of time of 90 days from the date of service of notice.

5. By taking this Court through the Roznama and the various dates of listing before the Court below, the learned counsel appearing for the petitioner highlighted the casual approach of the respondent, which according to him, displayed scant regard for the authority of the Court and the legal proceedings. It was submitted that the Court below failed to appreciate that leniency ought not to have been shown to the respondent herein, who had delayed the proceedings at every stage, including by filing an application for rejection of the plaint, which was subsequently withdrawn. On this basis, it was submitted that the impugned order deserves interference.

6. On the other hand, the learned counsel appearing for the respondent submitted that the Court below had condoned delay and as the written statement was already on record, it would be in the interest of justice that the dispute between the parties is decided on merits. If the written statement is not taken on record, the respondent would suffer grave prejudice. It was brought to the notice of this Court that the respondent is a widow, which fact this Court may take into consideration.

7. A perusal of the impugned order would show that the Court below has taken into consideration the position of law as regards the directory nature of outer limit of 90 days provided in Code of Civil Procedure after the amendment in the year 2002. It has been held in various Judgments of the Hon'ble Supreme Court that the requirement of filing the written statement within a period of 90 days, is directory and not mandatory. At the same time recalcitrant litigants are not to be given benefit for their conduct while considering the question of condonation of delay in filing written statement on behalf of the defendant.

8. It is also settled law that once the Court has condoned delay, by adopting a reasonable approach, the higher Courts would be slow in interfering with such orders. This Court is considering a Writ Petition and, therefore, unless it is demonstrated the Court below has committed a gross error, it would be improper to interfere with the impugned order. Considering the fact that the Court below considered the extent of delay and the law as laid down by the Supreme Court was applied to the facts and circumstances of the present case, this Court is not inclined to interfere with the impugned order.

9. At the same time, the Court below failed to appreciate that the petitioner i.e. the original plaintiff deserves to be compensated by way of costs for the inconvenience caused due to the approach of the respondent in filing the written statement after the period of 90 days. The roznama shows that the respondent sought adjournments for a period of about 6 months before an attempt was made to approach the Court below for condonation of delay and for making a request for taking the written statement on

record. Another aspect of the matter is that the proceedings in the suit were also delayed. In view of the aforesaid inconvenience caused to the petitioner, this Court proposes to give directions while dismissing the present writ petition.

10. In view of the above, the Writ petition is dismissed. At the same time, the respondent is directed to pay costs of Rs.10,000/- (Rupees ten thousand only) to the petitioner for the inconvenience caused due to delay in filing the written statement. Additionally, the Court below is directed to take all measures for disposing of the suit as expeditiously as possible and in any case within a period of 2 years from today. The amount of costs shall be paid within a period of eight weeks from today before the Trial Court.

MANISH PITALE, J.

MARIA AURA
PEREIRA

Digitally signed by
MARIA AURA PEREIRA
Date: 2021.10.06
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