

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION.708/2019

Late Antonio Xavier Rodrigues,
Son of late Salustiano Rodrigues,
Since Deceased through his LR's.

1. Mr. Humberto Anastasio Rodrigues,
Son of late Antonio Xavier Evangelista Rodrigues,
Agriculturist, aged 71 years,
Resident of H. No. 1/A/1, Tamborim,
Cavelossim, Salcete - Goa ... Petitioner.

Versus

1. Comunidade of Cavelossim
Having its Office Near Church of Cavelossim,
Cavelossim, Salcete – Goa.
Represented by its Procurador presently
One Francisco Caetano Rodrigues.

2. The Administrator of Comunidade
Of South Goa with Office at First Floor,
Comunidade Building, Margao – Goa.

3. Mr. Erasmo Aduardo Rodrigues,
Son of late Antonio
Xavier Evangelista Rodrigues,
Agriculturist, aged 67 years,
Resident of H. No. 1/A/1, Tamborim,
Cavelossim, Salcete – Goa. ... Respondents.

Mr. Prasheen Lotlikar, Advocate for the Petitioner.

Mr. Sudin Ustaonkar, Senior Advocate and Ms. T. Mashelkar, Advocate
for the Respondents.

Coram: M.S. SONAK, J.

Date: 16th February 2021

ORAL JUDGMENT:

Heard Mr. P. Lotlikar for the Petitioner and Mr. Sudin Usgaonkar, learned Senior Advocate with Ms. T Mashelkar for Respondent No.1 – the contesting respondent.

2. Mr. Lotlikar states that Respondent No.2 has been served in the matter and no notice was issued to Respondent No. 3 because he is the brother of the Petitioner and that his interest is not adverse to that of the Petitioner.

3. Accordingly Rule. The Rule is made returnable forthwith at the request of and with the consent of learned Counsel for the parties.

4. The challenge in this petition is to the order dated 17.02.2018 made by the 1st Additional Court of Senior Division at Margao in Civil Miscellaneous Application No.101/2016/I in Tenancy Case No.472/2015/I dismissing the Petitioner's application seeking restoration of Tenancy Case No.472/2015/I for non-prosecution.

5. In the year 2015, the jurisdiction for deciding tenancy cases under the Goa Agricultural Tenancy Act, 1964 was with the Civil Court and consequently, Tenancy Case No.472/2015/I was transferred to the Civil Court from the Joint Mamlatdar-II, Margao, Salcete, Goa.

6. The tenancy case was dismissed for non-prosecution on 11.11.2016. On the same date, the Petitioner filed Civil Miscellaneous Application No. 101/2016/I seeking restoration.

7. When the application for restoration was pending, the jurisdiction to decide tenancy cases was transferred from the Civil Court to the Joint Mamlatdar in terms of the legislative amendment which entered force on 29.08.2017.

8. Mr. Lotlikar contends that there was some confusion on account of this change in jurisdiction and the Petitioner bonafide believed that his application for restoration would stand transferred to the Joint Mamlatdar. Mr. Lotlikar in fact points out that when the matter was fixed before the Civil Court on 28.11.2017, the Petitioner was present in the Court and he was informed by the Registry of the Civil Court that the matter has already been transferred to the Joint Mamlatdar.

9. On 17.02.2018, however, the Civil Court vide the impugned order, dismissed the application for restoration, again on grounds of non-prosecution.

10. The Petitioner instituted the appeal before the District Judge-4 which was numbered as Civil Miscellaneous Application No.143/2018. The Appellate Court agreed that the Petitioner's contention that post 29.08.2017, the Civil Court lacked jurisdiction to deal with tenancy cases, but the Appellate Court proceeded to dismiss the

Petitioner's appeal by reasoning that even the Appellate Court did not have jurisdiction to deal with such matters.

11. Mr. Lotlikar submits that since the Petitioner was left with no effective forum, the present petition has been instituted. He submits that this was a case of genuine confusion and misunderstanding and the Petitioner's substantive rights ought not to be defeated based on such procedural issues. On instructions, he submits that the prejudice if any to the Comunidade can be compensated by payment of costs of ₹25,000/- which the Petitioner is willing to offer. Therefore, submits that the impugned order be set aside and the Petitioner's application for restoration be directed to be considered by the Joint Mamlatdar who will be the appropriate authority to decide such matters.

12. Mr. Sudin Usgaonkar, the learned Senior Advocate for the Comunidade submits that the Petitioner has been negligent and casual in the present matter and therefore, no reliefs may be granted to the Petitioner. He submits that the Petitioner should have diligently proceeded with the matter and the lack of diligence is evident because even the application for restoration was allowed to be dismissed for non-prosecution.

13. The rival contentions now fall for my determination.

14. In this case, upon the dismissal of Tenancy Case No.472/2015/I by the Civil Court, which as on 11.11.2016 had the jurisdiction to decide tenancy cases, the Petitioner applied for restoration

on the very same date. As such, it cannot be said that the Petitioner was not diligent in pursuing the tenancy application.

15. Thereafter, the Petitioner could have been more diligent in pursuing the application for restoration. However, the Petitioner has explained that there was a change in the jurisdiction on account of a legislative amendment that entered force on 29.08.2017. He has explained that he even attended the Court on 28.11.2017 but was informed by the Registry that the matter has been transferred to the Joint Mamlatdar. The explanation is quite reasonable and based thereon the Petitioner did not attend the Court proceedings on 17.02.2018 on which date the Civil Court dismissed his application for restoration, again on the ground of non-prosecution.

16. As of 17.02.2018, the Civil Court lacked jurisdiction to deal with Petitioner's application for restoration. Therefore, the order made by the Civil Court on 17.02.2018 is without jurisdiction and is required to be set aside on the said ground alone.

17. Even the Appellate Court after having correctly held that the Civil Court lacked jurisdiction to deal with the application for restoration on 17.02.2018, failed to exercise the jurisdiction vested in it by holding that even the Appellate Court did not have any jurisdiction in the matter because of the legislative amendment. The Appellate Court certainly had the jurisdiction to interfere with the order dated 17.02.2018 made by the Civil Court on the ground that the Civil Court lacked jurisdiction. Therefore, the Appellate Court could have always transferred the Civil

Miscellaneous Application No. 101/2016/I to the concerned Joint Mamlatdar for a decision on merits.

18. Be that as it may, the impugned order dated 17.02.2018 is now set aside and the Petitioner's Civil Miscellaneous Application No. 101/2016/I is now transferred to the concerned Joint Mamlatdar-II of Margao at Salcete for disposal following the law and upon its own merits. The Joint Mamlatdar-II will have to afford all the parties, effective opportunity of being heard.

19. This entire exercise is bound to prejudice the Comunidade to a certain extent but the prejudice can always be compensated by costs of ₹25,000/- which now the Petitioner is offering to pay to the Comunidade within four weeks from today. It is made clear that the payment of costs of ₹25,000/- to the Comunidade shall be a condition precedent for the Petitioner to avail the benefit of this order.

20. Mr. Lotlikar states that the amount of cost will be paid to the Comunidade through the Counsel for the Comunidade Ms. T. Mashelkar within four weeks and the Comunidade will issue the necessary receipt for the same. The receipt to be produced before the Joint Mamlatdar-II along with an authenticated copy of this order.

21. If the costs are indeed paid within four weeks, then the parties to appear before the Joint Mamlatdar-II on 05.04.2021 at 10:00 a.m.

22. Needless to add that if the costs are not paid within four weeks, then this petition will be deemed to have been dismissed without any further reference to his Court.

23. The rule is made absolute in the aforesaid terms.

24. All concerned to act on the authenticated copy of this order.

M.S. SONAK, J.

jfd/-