

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.1081 OF 2018

1. Mrs. Ludovina V. C. Rodrigues,
d/o Anselmo Rodrigues,
59 years of age,
service.

2. Mr. Leroy Menezes,
S/o Severino Salvador Menezes
age 37, service,

3. Mrs. Laffira Menezes,
Wife of Sanjay Rebello,
33 years of age, Indian National,

4. Mr. Sanjay Rebello,
Son of John Rebello,
38 years of age,

5. Mr. Larson Menezes,
S/o Severino Salvador Menezes,
32 years of age,
and all r/o H.No.136,
Nr. Candelaria Church,
Sasmole Baina,
Vasco da Gama Goa.

Petitioner Nos. 2 to 5 represented
by POA by Petitioner No.1.

... Petitioners

Versus

Smt. Sunita Ramkrishna Hindlekar,
w/o Ramkrishna Hidlekar,
major of age,
resident of House No.133/1,
Nr. Candelaria Church Baina,
Vasco da Gama Goa.

... Respondent

Mr. Arjun F. Naik, Advocate for the Petitioners.

Coram : M. S. SONAK, J

Date : 30th June 2021

ORAL JUDGMENT

Heard Mr. A. Naik, learned counsel for the Petitioners.

2 Rule. Rule is made returnable forthwith since, there was already a notice issued that this matter will be disposed of finally at the stage of admission. Mr. Naik points out that the Respondent has been duly served in this matter.

3. The challenge in this petition is to the order dated 08.10.2018 by which the learned Trial Judge dismissed the Petitioners' application for reopening of cross examination of the Plaintiff.

4. Mr. A. Naik, learned counsel for the Petitioners submits that the requirements in Civil Procedure Code that no more than three adjournments be granted is the only directory and not mandatory. He submits that for genuine reason, the Advocate for the Petitioners could not proceed with the cross examination on 27.07.2018 and this cause was not considered by the Trial Court. He therefore, submits that the impugned order be set aside and further opportunity be granted to the Petitioners to cross examine the plaintiff.

5. From the perusal of the record, there is no dispute that the Petitioners exhausted three adjournments during the cross examination of hearing. Thereafter, on 13.06.2018, the Advocate for the Petitioners applied for adjournment on the ground that he wishes to withdraw his appearance and therefore, will give notice to the Petitioners about such withdrawal. Based on this, the Court adjourned the matter to 27.07.2018 i.e. almost after one and half month.

6 On 27.07.2018, the record bears out that the same Advocate once again appeared in the matter and again applied for time to continue with the cross examination. It is in these circumstances, the learned Trial Court made the order for closure of further cross examination. According to me, no fault can be found with the impugned order. If the time was applied for on the previous occasion to withdraw the appearance and time of almost one and half month was secured then the Petitioners should either made alternate arrangement or at least instructed their Advocate who ultimately choose to proceed with the cross examination. After securing the adjournment, the Petitioners or their Advocate had no justification in seeking further adjournment on 27.07.2018. The observations made by the learned Trial Judge in the impugned order are quite correct that if such an attitude is encouraged then, it will be impossible to proceed to conclude the old matters like the present one.

7 The record bears out that the plaintiff i.e. the Respondent herein claims to be tenant. The plaintiff has alleged that her tenanted structure was demolished by the Petitioners and the reliefs are for restoration of the same. No doubt, the Petitioners contend that it is the plaintiff who abandoned the structure which came down on account of natural causes. The veracity of the rival contentions will ultimately be dealt with by the Trial Court. However, in a matter of this nature, it appears that the Petitioners are intending to protract the suit particularly now that the structure is already demolished. This can certainly be not encouraged.

8 The matter remained pending in this Court and on account of ad-interim orders secured by the Petitioners, the suit remained stayed for three years.

9 Having said all this at the persuasion of Mr. A. Naik, one additional opportunity is granted to the Petitioners to proceed with the cross examination of the plaintiff. This is only because of the submission that the Petitioners relied upon his Advocate and if the Advocate, declined to proceed with the cross examination, the Petitioners, should not be so severely prejudiced. In this, the Petitioners have gained from their Advocate seeking repeated adjournments. Therefore, even this reasoning may not be entirely correct. Despite all this, yet another opportunity can be granted to the Petitioners, provided

the Petitioners agree to cooperate with the Trial Court in expeditious disposal of the suit and further if the Petitioner pays costs of ₹50,000/- to the Respondent i.e. plaintiff in the suit. The payment of such costs shall be a precondition to avail of such opportunity.

10 Accordingly, the impugned order is set aside. The Petitioners are granted an opportunity to proceed with the cross examination of the plaintiff from the stage at which the same was closed. This is subject to the Petitioners paying costs of ₹50,000/- to the Respondent within a maximum period of two weeks from today i.e. on or before 14th July 2021. If there is any difficulty in paying the costs directly to the Respondent through proper banking transaction i.e. Demand Draft or bank transfer and not merely a cheque, then, the Petitioners, can deposit this amount on or before 14th July 2021 before the Trial Court. The Trial Court will grant opportunity to the Petitioners to proceed with the cross examination only if the costs are paid or deposited and not otherwise.

11 If the costs are deposited, the Trial Court to permit the Respondent i.e. the original Plaintiff to withdraw the same unconditionally. If for any reason, the costs are not paid or deposited on or before 14th July 2021 then this petition shall be deemed to have been dismissed with costs of ₹25,000/-. The Trial Court to then recover such costs from the Petitioners, by taking such steps as are permissible.

12 The reason for making the aforesaid order is because the Petitioners succeeded in stalling the proceedings before the Trial Court for a period of almost three years. If now the Petitioners are defaulting payment of costs subject to which the relief is granted then the Petitioners must pay costs of ₹25,000/- for the deemed disposal of this petition.

13 The interim stay on proceedings is hereby vacated. The Petitioners to file authenticated copy of this order before the Trial Court within one week from today. In any case, the registry is directed to send a copy of this order to the Adhoc Senior Civil Judge, 'A' Court, Vasco, taking up Regular Civil Suit No.44/2014/A, at the earliest.

14 The parties to now appear before the Trial Court on 14th July 2021 at 10.00 a.m. If for some reason, the Respondent i.e. original plaintiff does not appear, the Trial Court to issue notice to the plaintiff. The Petitioners to also give notice of this order to the original Plaintiff within one week from today.

15 Rule is disposed of in the aforesaid terms.

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

M. S. SONAK, J.

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