

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 394 OF 2022

Sanatkumar Shamba Sinai Pilgaonkar @ ... Petitioners
Sanatkumar Shamba Pilgaonkar & 5 Ors.

Versus

Kishori Manguesh Sinai Pilgaonkar Nee ... Respondents
Quishori Quenim & 8 Ors.

Mr. A. D. Bhobe, Advocate with *Ms. S. Shaikh and Ms. Annelise Fernandes, Advocate for the Petitioner.*

CORAM. G. S. KULKARNI, J
DATED. 14th September, 2022

P.C.

1. I have heard Mr. Bhobe, learned Counsel for the Petitioners on this petition for sometime. The petition challenges an order dated 05.07.2022 passed by the learned Senior Civil Judge, Ponda, whereby a miscellaneous application filed by the respondent/plaintiff in an application for restoration of the suit, praying for amendment of the cause title of the restoration application, to the effect that the legal heirs of the deceased respondent no. 13 (who expired during the pendency of the suit), be impleaded as the parties in the restoration application, has been allowed.

2. Mr. Bhobe, learned Counsel, has objections to paragraph 6 of the order which reads thus :

“6. The present application is filed for restoration of the said suit. The legal representatives of Defendant no.3 who were sought to be brought on record are necessary parties in the present proceedings. As regards the argument of Defendants no. 1 to 6 that the application for restoration is barred by law of limitation as regards the said legal representatives who are sought to be added now, such objection if any can be taken up by the said legal representatives after putting appearance in the matter and the said point can be decided while hearing the application for restoration on merits.”

3. The contention of Mr. Bhobe is that the above observations would preclude his clients–defendant nos. 1 to 6 from raising a contention that the restoration application is barred by limitation, including the defendant no.13.

4. In my opinion, the learned trial Judge has infact made it clear that all contentions of the petitioners (defendant nos. 1 to 6) on limitation can be urged at the hearing of the restoration application. The suit itself was dismissed and it is the restoration application which is subject matter of consideration before the Trial Court. In fact, in passing the impugned order the limited consideration by the trial court was on the miscellaneous application and not on the restoration application. Hence all contentions of the petitioners on the restoration application and the effects the restoration would have on the suit are yet to be gone into by the Trial Court.

5. In these circumstances the petition is disposed of permitting the petitioners to urge all contentions including on limitation in the adjudication of the restoration application.

6. Disposed of. No costs.

G. S. KULKARNI, J

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