

Vinita

IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO. 30 OF 2022

MARIA NANDA DESA AND 3 ORS ... Petitioners.
VS
THOMAS FRANCIS INNOCENT DSOUZA,
THR. HIS ATTORNEY, SANTANA ... Respondents.
ALBERTO CARLOS NAZARETH AND ANR

Mr. J. E. Coelho Pereira, Senior Advocate with Mr. V. Joshi, Advocate
for the petitioners.

Mr. G. Agni, Advocate for the respondents.

CORAM: G. S. KULKARNI, J.
DATE: 11 OCTOBER 2022.

P.C.:

1. Heard Mr. Mr. J. E. Coelho Pereira, learned Senior Counsel for the petitioner, and Mr. G. Agni, learned Counsel for the respondents. By consent of the parties heard finally at the admission stage.

2. The order impugned in this petition is dated 26 June 2019 passed by the learned District Judge-II Mapusa, whereby Rent Appeal No.5 of 2018 as filed by the respondents assailing the order dated 13 June 2018 passed by the learned Civil Judge, Junior Division "F" Court Mapusa has been set aside.

3. By such order, the petitioner's application below Exh.1 praying for condonation of delay in filing an application for setting aside of the ex-parte judgment and order dated 11 December 2015 passed on the Rent Application No.16/2013/F came to be allowed.

4. The learned Trial Judge had considered the case of the petitioner that sufficient cause was made out by the petitioner in as much as the petitioner had engaged an advocate who appeared to have not pursued the matter, resulting in an ex-parte decree being passed against the petitioner and only when a such ex-parte decree was put into execution and on the execution proceedings being served on the petitioners it had come to their knowledge that an ex-parte decree was passed. Such order granting delay condonation was appealed by the respondents before the learned District Judge who by the impugned order allowed the said appeal setting aside the application for condonation delay as granted by the learned trial Judge.

5. Considering the nature of the order passed by the learned District Judge, it appears that a hard technical view of the matter has

been taken by the learned District Judge. What has been overlooked is that it was not in dispute that the petitioners had engaged an advocate who was supposed to represent the petitioner. The record indicates that certainly the advocate had not appeared. The Advocate had failed to pursue the proceedings. This position is also not disputed on behalf of the respondent. Thus the petitioners could not have been faulted. It is settled position that the party cannot be made to suffer due to the fault of his advocate.

6. In the aforesaid circumstances, I am of the opinion that the impugned order dated 26 June 2019 passed by the learned District Judge-II is required to be quashed and set aside. The petition is accordingly allowed in such terms. Ordered accordingly.

7. Considering the facts and circumstances of the case, in my opinion, it would be appropriate that parties are heard on the petitioner's application for setting aside of the ex-parte decree which is pending before the learned trial Judge. Parties shall appear before the trial Court on 21 October 2022, on which date, the learned trial Judge shall fix an appropriate date for the hearing of such application.

8. All contentions of the parties on merits are expressly kept open.
9. Disposed of in the above terms. No costs.

G. S. KULKARNI,J.