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IN THE HIGH COURT OF BOMBAY AT GOA

MISC. CIVIL APPLICATION NO.967/2019

IN

WRIT PETITION NO.467/2019

ISABELA GOMES NEE REBELLO. ... APPLICANT/
ORIGINAL
PETITIONER

Versus

JUDAS SIMON BARRETO & 16 ORS. ...RESPONDENTS

**Mr. Mathew D'Costa, Advocate for the Applicant/Original
Petitioner.**

Mr. J. Abreu Lobo, Advocate for the Respondents No.1 to 4 & 6.

**Mr. S. N. Joshi with Ms. S. Rawool, Advocates for Respondent
No.14.**

**CORAM: M. S. SONAK &
R. N. LADDHA, JJ.**

DATED: 18th April 2022

P.C.:

- 1.** Heard learned counsel for the parties.
- 2.** The original petitioner-applicant seeks the following substantive reliefs in this miscellaneous civil application.

“(a) The Writ Petition No.467 of 2019, dismissed for non-prosecution on 6th September, 2019 be restored in the original position;

(b) Be pleased to take stringent action against the person who are involved in restraining the Applicant from accessing justice;”

3. Mr. Mathew D'Costa, learned counsel for the applicant/original petitioner submits that he along with the original petitioner were following up the progress of the petition on the Case Information System (CIS) of the High Court of Bombay at Goa. He pointed out that on the version updated on Wednesday, July 17, 2019, the next hearing date was shown as Monday, January 6, 2020. He invited out attention to Exh.E + 6 at page 30 of the paper book of this miscellaneous civil application. He submitted that this being the disclosed position on the website, the matter ought not to have been taken up on Friday, 6th September, 2019 and dismissed for non-prosecution on account of the absence of the original petitioner and/or her advocate.

4. Mr. D'Costa then referred to certain allegations made by the original petitioner in paragraph 16 and 17 of the miscellaneous civil application and based upon the same urged that stringent action should be taken against persons who are

involved in restraining the original petitioner from accessing justice.

5. The order dated 06.09.2019 dismissing Writ Petition No.467/2019 for non-prosecution records that the matter was called out on 02.08.2019 and on 30.08.2019. On both these dates neither the original petitioner nor her advocate appeared. The order then records that the matter was once again called out on 06.09.2019, on which date again the same position continued. From this, the Court inferred that the original petitioner might not be interested in pursuing the petition and the petition was dismissed for non-prosecution.

6. At the very outset, by our order dated 18.11.2019, we had made it clear that we were inclined to restore the petition that was dismissed for non-prosecution. We said so in the first sentence of our order dated 18.11.2019. However, learned counsel for the original petitioner submitted that the petitioner was desirous of pressing the allegations against the Registry and would not be satisfied with the simple restoration. Accordingly by our order dated 18.11.2019 we also granted original petitioner liberty to file an affidavit in relation to the allegations. Despite liberty, no affidavit was filed for a long time. However, later on, an affidavit was filed on 10.01.2020. We have perused the affidavit and we

find that the same is mostly a repetition of what was set out in the miscellaneous civil application seeking restoration. The affidavit neither names any person from the Registry nor demonstrates the complexity of any official from the Registry. In short, we find that there is nothing either in the miscellaneous civil application or in the affidavit in support of the allegations made by the original petitioner about some “*silent role played by the High Court Registrar*” or “*..... active connivance of the Registrar of the High Court of Goa*” or “*..... the Registrar was instrumental in getting the Writ Petition dismissed for non-prosecution*”. These allegations, according to us, have been made by the original petitioner without any basis and sense of responsibility. We therefore reject such allegations.

7. Nevertheless, on 01.04.2022 we heard Mr. D'Costa and made the following order:

“ ***CORAM : DIPANKAR DATTA, CJ. &
M. S. SONAK, J.
DATED : 1st April 2022***

P.C.

1. This civil application is an application seeking recall of order dated 06.09.2019 passed by a co-ordinate Bench of this Court, whereby Writ Petition No. 467/2019, instituted by the applicant, was dismissed for non-prosecution.

2. *It is the case of the applicant that she had visited the website of this Court on 17.07.2019 and on the web page it was indicated that the next date of hearing of her writ petition was 06.01.2020. However, in the meanwhile, the writ petition was placed on board without the applicant having any knowledge in regard thereto; consequently, she could not appear and because of her non-appearance on 06.09.2019, the order of dismissal came to be passed.*

3. *The applicant has raised serious allegations against the Registry of this Court. At paragraph 17, it is alleged that “the matter could not have been dismissed for non-prosecution without active connivance of the Registrar of the High Court of Goa and therefore the Registrar was instrumental in getting the writ petition dismissed for non-prosecution.”*

4. *Although such wild allegation finds place in the application, it is surprising that in her representation dated 18.09.2019, addressed to the Chief Justice of this Court immediately after she came to learn of dismissal of her writ petition for non-prosecution, not a whisper is made by the applicant with regard to the information that she derived on 17.07.2019 upon visiting the website of this Court which is Exhibit 'G' at page 36 of the application.*

5. *If indeed the petitioner had visited the website on 17.07.2019, it defies logic as to why in her representation dated 18.09.2019, she omitted to mention that the writ petition was due to be listed on 06.01.2020 and not on 06.09.2019.*

6. *This omission on the part of the applicant raises serious doubt as regards the allegations levelled by her in the*

application. However, without being too technical and considering that a cause brought before the Court is better addressed if there be an adjudication on merits, we would be inclined to allow the application for recall of the order dated 06.09.2019 but not before we seek a report from the Registry as to the entire state of affairs which led to the dismissal of the writ petition for non-prosecution on 06.09.2019.

7. Accordingly, hearing of this application stands adjourned to 18.04.2022.

8. The Registrar (Judicial) shall submit a report before this Court in a sealed cover by 13.04.2022 as to how the writ petition could be listed on 06.09.2019 although the information derived by the applicant was otherwise, as noted above. On consideration of such report, we propose to consider the application for recall.”

8. Pursuant to the above order the Registrar (Judicial) has submitted a report in sealed cover about how the Writ Petition was listed on 06.09.2019 though the information derived by the original petitioner on the website had indicated that the matter was posted for 06.01.2020.

9. In the report, the Registrar (Judicial) has explained that as per the Case Information Management System (CIMS) prevailing before implementation of the present CIS, matters for admission/orders on the provisional board were shown posted to a future

date that was auto generated by the CIMS. He pointed out that that 06.01.2020 was this auto generated date and such auto generating was natural without any human interference. This was not the date given by the Court or by any official of the Court but this was a date which was auto generated by the computer system itself.

10. The report further sets out that the advocate for the original petitioner had sent a letter dated 11.07.2019 to the Registrar inquiring about the status of the matter. This letter was received in the entry section on 12.07.2019 and the same was received by the Registrar (Judicial) on 16.07.2019. The report states that the Registrar (Judicial) forwarded such letter to the Deputy Registrar (Judicial) on the same date for necessary action.

11. The report then explains how the matter was taken out from the provisional list and placed on the board. The report also explains how the advocate for the parties receive a message on the mobile and email where such details are furnished by the advocates and entered in the system. The report then refers to Rule 29 of Chapter IV of the Bombay High Court Appellate Side Rules, 1960 which reads as followed:

“ Advocates not ordinarily practising in High Court to leave written instructions and supply necessary postage, if desiring information regarding their matters by post. - Advocates who do not reside or have their Office within the limits of Greater Bombay/Nagpur City/Aurangabad City or Panaji should have, in respect of their appearances in the High Court or its Benches at Nagpur, Aurangabad or Panaji as the case be, a recognised clerk attached to the High Court or its benches at Nagpur, Aurangabad or Panaji duly registered as such with the Office of the Registrar or Additional Registrar [or the Special Officer] as the case be. Service on such clerk, shall be deemed to be service on the Advocate.”

12. The report then states that the system of SMS or email alert is available only for those advocates whose names are registered and to whom a code number is also allotted. The report then adds that the advocate for the original petitioner had neither supplied the necessary postage for seeking information of his matter by post nor informed about any recognized clerk attached to the High Court of Bombay at Goa for serving the requirement of Rule 29 as above.

13. According to us, the explanation furnished by the Registrar (Judicial) can be accepted. However, even after accepting such explanation, we are satisfied that the original petitioner must be given an opportunity to prosecute her case because it is possible that the original petitioner or her advocate did not expect the

matter to appear on the board before Monday, January 6, 2020 which is the date reflected in Exh.E + 6 at page 30. Though the issue remains as to why this crucial aspect was not highlighted by the original petitioner in her representation dated 18.09.2019, some benefit can be extended to the original petitioner so that she gets an opportunity to prosecute her matter through her advocate.

14. Therefore, by accepting the explanation furnished by the Registrar (Judicial), we reject the allegations made by the original petitioner against the Registry. Nevertheless, in the interest of justice and having regard to the entry in the CIS as updated on Tuesday, July 2, 2019 we recall our Order dated 06.09.2019 and restore Writ Petition No.467/2019 to our file.

15. Hereafter, the advocate for the original petitioner will have to comply with Rule 29 of Chapter IV of the Bombay High Court Appellate Side Rules, 1960 so that there is no further occasion for miscommunications.

16. At the request of Mr. D'Costa, learned counsel for the original petitioner, we post the restored Writ Petition No.467/2019 for admission on 08.06.2022.

17. Miscellaneous Civil Application No.967 of 2019 is disposed of in the aforesaid terms. There shall be no order for costs.

R. N. LADDHA, J.

M. S. SONAK, J.

SUCHITRA Digitally signed by
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