

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.167 OF 2023

JERONIMO RODRIGUES AND ANR

... PETITIONERS

Versus

CONCEICAO PEREIRA AND 28 ORS

... RESPONDENTS

Mr J. J. Mulgaonkar, Advocate for the Petitioners.

Mr C. A. Coutinho, Advocate for the Respondent No.6.

CORAM:- M. S. KARNIK, J.

DATED :- 22nd June, 2023

ORAL ORDER

Heard learned counsel for the petitioners and learned counsel for the respondent no.6.

2. The trial Court rejected an application-Exhibit D-12 for taking the written statement on record.

3. The suit was filed in the year 2018. Summons were served on the present petitioners-original defendant nos. 1 and 2 on 08.01.2019. The defendants thereupon pointed out that the copies of the annexures were not supplied along with the plaint. From the impugned order it is seen that the Court had directed the plaintiffs to serve the copy of the documents enclosed along with the plaint. On 23.01.2020, the plaintiffs gave an undertaking that they shall give the copy of the

documents enclosed with the plaint. The documents were furnished on 26.02.2020. The plaintiffs filed an application directing the defendants to give legible copies of the documents. From 20.04.2020 to 23.11.2020, the Court was not sitting due to Covid-19 pandemic. On 13.01.2021, the matter was adjourned and on 24.02.2021, the defendant no.1 filed an application for rejection of plaint at exhibit D-9 and also filed an application for extension of time to file written statement which is at exhibit D-10. The said application was not granted as the trial Court noted 'file'. On 13.12.2021, the application for rejection of plaint came to be dismissed. On 04.03.2022, the application exhibit D-12 was filed for extension of time to file the written statement. The trial Court was of the opinion that sufficient cause is not shown for filing the written statement within the time stipulated and therefore the application for extension of time was rejected. Aggrieved, the present writ petition is filed.

4. Mr. Coutinho, learned Counsel for respondent no.6, vehemently opposed the application. It is submitted that the defendants have acted in a very casual manner and, therefore, do not deserve any indulgence. Moreover, it is submitted by Shri Coutinho that the filing of the application under Order VII Rule 11 of the Civil Procedure Code (CPC) for rejection of the plaint was only a ruse to extend the time for filing the written statement. In any case, it is submitted that there is no explanation whatsoever in the application exhibit D-12 as regards the delay for the period from 26.02.2020 to 04.03.2022 except for saying

that the application under Order VII Rule 11 of CPC was filed on 24.02.2021, which application itself was filed one year after all the documents were supplied to the defendants. It is therefore prayed that the petition be rejected.

5. I have perused the memo of the petition, the documents annexed, and the impugned order. Heard learned counsel.

6. From the explanation tendered by the defendants, it does seem that the applicant has not at all been prompt in filing the written statement. Up to 26.02.2020 i.e. the date on which the documents enclosed with the plaint were supplied, there is a good explanation. Regard may be had to the fact that for the period from 20.04.2020 to 23.11.2020, the trial Court was not sitting due to Covid-19 pandemic. The functioning of the Court was seriously affected during this period due to Covid-19 pandemic. It is only on 24.02.2021 that an application under Order 7 Rule 11 of the CPC came to be filed which was rejected on 13.12.2021 and ultimately the application was made for extension of time to file written statement. There is some explanation that for a certain duration of time, the wife of the defendants' Advocate was not keeping well and was hospitalized. It is submitted that there was some communication gap between the defendants and their Advocate. This is not a case of no explanation whatsoever, such that the same does not deserve acceptance even upon saddling the petitioners with costs.

7. In the interest of justice, an opportunity could be given to the defendants to file their written statement by imposing costs. Costs are quantified at Rs.10,000/-. Payment of cost is a condition precedent for taking the written statement on record. Cost will be paid to the plaintiff within two weeks from the date of uploading of the order. The written statement to be filed within a period of two weeks from the date of uploading of the order. If costs are not paid, the order of the trial Court shall stand revived.

8. The petition is allowed. It is made clear that the defendants shall cooperate with the trial Judge and shall not seek any unnecessary adjournment. Furthermore, as the suit is of the year 2018, the trial Court is requested to expedite the suit.

9. Parties to cooperate with the early disposal of the suit. The parties shall appear before the trial Court on 03.07.2023 at 10.00 a.m.

M. S. KARNIK, J.

ANDREZA PEREIRA Digitally signed by ANDREZA
PEREIRA
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