

Esha

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 243 OF 2020

1. Purnanand S. Audhi (deceased) Thr.
his legal heirs

a) Mrs. Madhavi Anand Hegde, daughter
of Purnanand S. Audhi, aged 50 years,
married and her husband

b) Mr. Anand Narayan Hegde, son of
Narayan Hegde, aged about 50 years,

Both residing at H. No. not known,
Supreme, Caranzalem, Ilhas, Panaji-Goa.

c) Mrs. Usha Gajanan Keni, daughter of
Purnanand S. Audhi, aged 48 years,
married and her husband

d) Mr. Gajanan G. Keni, son of Govind G.
Keni, aged about 50 years,

Both resident of H. No. known, Goa
Velha, Tiswadi, Goa.

2. Smt. Sheila Purnanand Audhi, widow
of Purnanand S. Audhi, aged 65 years,
H. No. 11/2, Panlarj Tonca, Caranzalem,
Ilhas, Panaji-Goa.

3. Mr. Suresh Somun Audhi, son of
Somun Sinai Audhi, aged about 79 years,
married and his wife

4. Smt. Meenakshi Suresh Audhi (since
deceased), wife of Suresh Somun Sinai
Audhi, aged 71 years,

Both residing at H. No. 43, Near Maruti
Mandir, Dovorlim Housing Board,
Dovorlim, Salcete, Goa.

4a) Mr. Somnath alias Rajesh Suresh
Audi

4b) Mrs. Uma Somnath Audi

4c) Mr. Mondaar Suresh Audi

4d) Mrs. Mitali Mondaar Audi

All resident of H. No. 43, Near Maruti
Mandir, Dovorlim Housing Board,
Dovorlim, Salcete, Goa.

... PETITIONERS

Versus

1. Gopal Vassudev Sinai Mopkar @ Gopal
Vasudev Kamat @ Gopal Vasudev
Motcar, aged about 69 years, married,
R/o H. No. 75/2, Near Santeri Temple,
Khorlim, Mapusa, Bardez, Goa.

2. Dattu Nillu Fal Dessai (deceased)

a) Mr. Nilkant Dattu Fal Dessai, son of
Dattu Nillu Faldessai, aged 63 years,
married and his wife,

b) Mrs. Prashanti Nilkant Fal Dessai,
wife of Nilkant Dattu Fal Dessai, aged 53
years,

Both residing at H. No. 60, Karemol
Balli, Quepem, Goa.

c) Mr. Rohidas Dattu Fal Dessai
(deceased) Through his legal heirs

i) Smt. Hira Rohidas Fal Dessai, widow
of late Rohidas Dattu Fal Dessai, aged 48
years,

ii) Mr. Rohit Rohidas Fal Dessai, son of
Rohidas Dattu Fal Dessai, aged 23 years,

Both residing at H. No. 60, Balli Math,
Quepem, Goa.

d) Mr. Ramakant Dattu Fal Dessai, son
of late Dattu Nillu Fal Dessai, aged 55
years, married and his wife,

e) Mrs. Alka Ramakant Fal Dessai, wife
of Mr. Ramakant Dattu Fal Dessai, aged
45 years,

Both residing at H. No. 60, Balli Math, Quepem, Goa.

3. Balsu Vithoba Fal Dessai (deceased) through his legal heirs

a) Mrs. Sulochana Balsu Fal Dessai, widow of late Balsu Vithoba Fal Dessai, aged 69 years

b) Mr. Deepak Balsu Fal Dessai, son of late Balsu Vithoba Fal Dessai, aged 47 years

c) Mrs. Ujwala Deepak Fal Dessai, wife of Mr. Deepak Balsu Fal Dessai, aged 23 years,

All r/o H. No. 67, Balli Math, Quepem, Goa.

d) Mr. Mandar Balsu Fal Dessai, son of late Balsu Vithoba Fal Dessai, aged 41 years, married and his wife

e) Mrs. Kanchan Mandar Fal Dessai, wife of Mandar Balsu Fal Dessai, aged 40 years,

Both r/o H. No. 67, Balli Math, Quepem, Goa.

4. Mr. Pundalik Vithoba Fal Dessai, son of Vithoba Fal Dessai, aged 79 years, married and his wife

5. Mrs. Surang Pundalik Fal Desai, wife of Pundalik Vilthoba Fal Dessai, aged 71 years,

Both r/o H. No. 58, Balli Math, Quepem, Goa.

6. Vithal Gurgro Fal Dessai (deceased) Through his legal heirs,

a) Gurudas Vithal Fal Dessai, s/o Vithal Gurguro Fal Dessai, aged 80 years, r/o H. No. 127/1, Caremol, Balli, Quepem, Goa.

- b) Vinod Gurudas Fal Dessai, s/o Gurudas Vithala Fal Dessai, aged 43 years, r/o H. No. 127/1, Caremol, Balli, Quepem, Goa.
- c) Sarla Vinod Fal Dessai, w/o Vinod Gurudas Fal Dessai, aged 36 years, r/o H. No. 127/1, Caremol, Balli, Quepem, Goa.
- d) Gokuldas Gurudas Fal Dessai, s/o Gurudas Vithala Fal Dessai, aged 42 years, r/o H. No. 127/1, Caremol, Balli, Quepem, Goa.
- e) Priya Gukuldas Fal Dessai, w/o Gokuldas Gurudas Fal Dessai, aged 36 years, r/o H. No. 127/1, Caremol, Balli, Quepem, Goa.
- f) Mr. Ramkusta alias Shailesh Gurudas Fal Dessai, s/o Gurudas alias Vithala Fal Dessai, r/o H. No. 127/1, Caremol, Balli, Quepem, Goa.
- g) Depali Ramkusta Alias Shailesh Fal Dessai, w/o Ramkusta alias Shailesh Fal Dessai, aged 33 years, r/o H. No. 127/1, Caremol, Balli, Quepem, Goa.
- h) Ramakant Vithal Fal Dessai, s/o Vithala Gurguro Fal Dessai, aged about 65 years, r/o H. No. 127/2, Caremol, Balli, Quepem, Goa.
- i) Ranjita Ramakant Fal Dessai, w/o Ramakant Vithala Fal Dessai, aged 59 years, r/o H. No. 127/2, Caremol, Balli, Quepem, Goa.
- j) Vishwanath Vithala Fal Dessai (deceased) through his legal heirs,
- j(a) Vishwalata Vishwanath Fal Dessai w/o Vishwanath Vithala Fal Dessai, aged 69 years, r/o H. No. 128/1, Balli Math, Quepem, Goa.

j(b) Vishwajit Vishwanath Fal Dessai, s/o Vishwanath Vithala Fal Dessai, aged 48 years, r/o H. No. 128/1, Balli Math, Quepem, Goa.

j(c) Neena Vishwajit Fal Dessai, w/o Vishwanath Vithala Fal Dessai, aged 45 years, r/o H. No. 128/1, Balli Math, Quepem, Goa.

j(d) Mr. Vikarant Vishwanath Fal Dessai, s/o Vishwanath Vithala Fal Dessai, aged 43 years, r/o H. No. 128/1, Balli Math, Quepem, Goa.

j(e) Mrs. Vidhi Vikrat Fal Dessai, w/o Vikrant Vishwanath Fal Dessai, aged 40 years, r/o H. No. 128/1, Balli Math, Quepem, Goa.

(k) Mr. Shayam Vithala Fal Dessai, s/o Vithala Gurguro Fal Dessai, aged 55 years, r/o H. No. 124/1, Balli Math, Quepem, Goa.

(l) Mrs. Geeta Shayam Fal Dessai, w/o Shayam Vithala Fal Dessai, aged 47 years, r/o H. No. 124/1, Balli Math, Quepem, Goa.

7. Krishna Nilu Fal Dessai, son of late Nilu Fal Dessai, aged 84 years, r/o Plot No. 55, H. No. 252, Gogal Housing Board, Margao, Goa.

8. Mrs. Usha Krishna Fal Dessai, wife of Krishna Nilu Fal Dessai, since deceased through her legal heirs

8(a) Sujata Paresh Gauns, daughter of Krishna Nilu Fal Dessai and w/o Paresh Gauns, aged 44 years, resident A-108, SATT-Adhar Complex, Kharwada, Mapusa, Goa.

8(b) Paresh G. Gauns, aged 46 years, resident A-108, SATT-ADHAR Complex,

Kharwada, Mapusa, Goa.

8(c) Shiva Narayan Shetgaonkar, son of Narayan Shetgaonkar, aged 42 years, r/o Plot No. 55, H. No. 252, Gogal Housing Board, Margao, Goa.

8(d) Sonali Shiva Shetgaonkar, wife of Shiva Narayan Shetgaonkar, aged 42 years, r/o Plot No. 55, H. No. 252, Gogal Housing Board, Margao, Goa.

8(e) Nainesh Dattaram Dessai, aged 45 years, Budshet Apartment, 1st Floor, Tonca, Caranzalem, Panaji, Goa.

8(f) Supriya Nainesh Dessai, w/o Nainesh Dattaram Dessai, aged 40 years, Budshet Apartment, 1st Floor, Tonca, Caranzalem, Panaji, Goa.

8(g) Paresh L. Onsekar, s/o Laxman Onsekar, aged 40 years, r/o Plot No. 44, Green Housing Society, Shantadurga Sangodekarin Temple, Porvorim, Bardez, Goa.

8(h) Priya Paresh Onsekar, wife of Paresh L. Onsekar, aged 38 years, r/o Plot No. 44, Green Housing Society, Shantadurga Sangodekarin Temple, Porvorim, Bardez, Goa.

9. Premavati Vishnu Fal Dessai (deceased) represented through her legal heirs (The Respondent Nos. 7 and 8(a) to (h).

... RESPONDENTS

Mr. R.G. Ramani, Senior Advocate with Mr. Sadanand Chopdenkar, Advocate for the Petitioners.

Mr. Dharmanand Vernekar, Advocate for Respondent No. 1.

CORAM: B.P. DESHPANDE, J.

DATED: 15th JULY 2023

ORAL JUDGMENT:

1. Heard learned Senior Counsel Mr. Ramani along with Mr. Chopdenkar for the Petitioners and Mr. Vernekar, learned Counsel for Respondent No. 1.

2. Rule. Rule made returnable forthwith. This matter is taken for final disposal with the consent and at the request of the learned Counsel for the parties.

3. The present Writ Petition is filed by the contesting Defendants, who were not allowed to file the written statement by the Trial Court only on the ground that there is an inordinate delay of around three years.

4. The learned Senior Counsel Mr. Ramani pointed out that the Petitioners, on receipt of the summons, used to appear in person before the Trial Court and initially, they filed an Application for keeping the suit in abeyance. Such an Application was kept for reply and arguments. After the dismissal of such an

Application on 29.05.2019, the learned Trial Court fixed the matter for written statement on 26.06.2019. He then submitted that the present Petitioners filed an Application on 26.06.2019 seeking permission from the Trial Court to file a joint written statement. Such an Application was kept for reply and arguments. He then submitted that on 19.07.2019, an Application for condonation of delay together with a written statement duly signed by all the Petitioners was filed. The learned Trial Court fixed the matter for reply and arguments on the said Application. Later on, Defendant No. 11 filed another Application stating that he was authorized to file an Application for condonation of delay by the other Petitioners. The learned Trial Court vide impugned order dated 21.01.2020, dismissed the Application for condonation of delay and accordingly, the written statement filed by the Petitioners was not taken on record.

5. Per contra, Mr. Vernekar, strongly contended that the Application for condonation of delay nowhere gives any reasons for such a long delay. He then submitted that the Petitioners unnecessarily delayed the matter by filing the Application for keeping the suit in abeyance and only after the decision, they tried to file the written statement.

6. The rival contentions fall for determination as under:-

7. The impugned order itself shows the details as to when the Petitioners were served with summons. It also shows that the Application was filed on behalf of the Petitioners to keep the suit in abeyance. The said Application was kept for filing say and arguments. The said Application was taken up for arguments on 29.05.2019 and it was rejected and thereafter, the learned Trial Court kept the matter for written statement on 26.06.2019, which is clear from paragraph 9 of the impugned order.

8. There is no dispute that the present Petitioners were appearing in person before the Trial Court and they were not represented by an Advocate. When the matter was fixed for written statement on 26.06.2019, it carried an impression that the Trial Court gave an opportunity to the Defendants to file the written statement inspite of lapse of time and accordingly, another Application was filed on 26.06.2019, thereby, praying that a common written statement be permitted to be filed on record.

9. First of all, the learned Trial Court could have decided such an Application as there is no question of seeking a say of the Plaintiffs since the Defendants either jointly or individually are entitled to file the written statement.

10. Defendant No. 11 then filed an Application on 19.07.2019 for condonation of delay. Along with the said Application, a written statement signed by all the Petitioners was also presented to the Court.

11. The learned Trial Court then fixed the Application for condonation of delay for reply and arguments. By the impugned order, the learned Trial Court rejected the Application for delay and accordingly, the written statement was not taken on record.

12. Mr. Ramani placed reliance on the case of **Kailash Vs. Nanhku & Others, (2005) 4 SCC 480**, wherein the three-Judge Bench of the Hon'ble Supreme Court discussed in detail the provisions of Order VIII of CPC and observed that the filing of the written statement beyond the period fixed could be permitted as the Court is not powerless, however, the party has to give sufficient reasons.

13. Mr. Vernekar heavily placed reliance on **Mohammed Yusuf Vs. Faij Mohammad & Others, (2009) 3 SCC 513**, which is the decision of the two-Judge Bench of the Hon'ble Apex Court.

14. First of all, the case of **Kailash** (supra) is binding since it is delivered by the Bench of three Judges of the Hon'ble Apex Court and specifically, discussed the aspect as to whether the Court is having powers to condone the delay or extend the period of filing the written statement. In the case of **Mohammed Yusuf** (supra), the case is distinguishable as there was an inordinate delay of three years without any reason.

15. In the present matter, admittedly, the Petitioners were appearing in person and they were lacking knowledge of the procedure. The Application for condonation of delay filed by them at Exhibit-6 discloses that the Petitioners were senior citizens and suffering from ailments. This Application was filed on Affidavit. The written statement is signed by all the Petitioners. Though the Plaintiffs filed a reply opposing such an Application, it was the duty of the Trial Court to consider the grounds disclosed in the Application for condonation of delay taking into account

that the Petitioners were appearing in person and that the Court itself fixed the matter for written statement after dismissal of Application for keeping the suit in abeyance. After expiry of 90 days period to file written statement, no order was passed by Trial Court, that the matter shall proceed without written statement.

16. It has been disclosed that the present Petitioners are the only contesting Defendants in the said suit. By not allowing to take the written statement on record, the Defendants were handicapped in defending the said suit. Too technical approach on behalf of the Trial Court, in such circumstances, clearly hampers the valuable rights of the parties.

17. In the case of the **Bharat Kalra Vs. Raj Kishan Chabra** [Civil Appeal No. 3788 of 2022 dated 09.05.2022], the Hon'ble Apex Court by following the principles laid down in the case of **Kailash** (supra) observed that the filing of the written statement could be very well compensated with costs but denying the opportunity of filing such written statement is unreasonable.

18. Following the said observations, I am inclined to allow the Petition subject to costs of ₹10,000/-. Such costs shall be paid

within a period of one month in the office of the District Legal Services Authority, South Goa and produce the receipt before the Trial Court. Payment of costs is conditional and only thereafter, the written statement shall be taken on record.

19. In view of the above, the following order is passed:

O R D E R

- (a) The Petition stands allowed.
- (b) The impugned order is quashed and set aside.
- (c) The written statement filed on behalf of the Petitioners is permitted to be taken on record by condoning the delay, subject to payment of costs of ₹10,000/-, to be deposited within one month in the office of the District Legal Services Authority, South Goa.

20. Rule is made absolute in the above terms.

B.P. DESHPANDE, J.

VAIGANKAR
ESHA SAINATH

Digitally signed by
VAIGANKAR ESHA SAINATH
Date: 2023.07.18 14:58:36
+05'30'