

Vinita

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 294 OF 2023

ABRAHAM JOSEPH
VS
MARY MYRLE FERNANDES AND 6 ORS.

...Petitioner.
...Respondents.

Mr. N. Takkekar and Mr. S. Bhaje, Advocate for the petitioner.
Mr. A. D. Bhobe and Ms. S. Shaikh, Advocate for the respondent
nos.2 to 5.

CORAM: **M. S. KARNIK, J**

DATE : **14th July 2023**

ORDER:

1. Heard learned counsel for the petitioner.
2. The challenge by this writ petitioner is to an order dated 2.3.2023 passed by the trial Court refusing to set aside the order closing the evidence of the plaintiff. The plaintiff as well as his advocate failed to remain present on successive occasions as a result of which the plaintiff's evidence was closed. Thereafter an application was filed by the plaintiff below Exh.48 for setting aside the order dated 16.6.2022 closing the evidence of the plaintiff. The trial Court did not find any substance in the application. Not being satisfied

with the reasons mentioned in the application Exh. 48 came to be rejected.

3. The learned counsel for the respondent nos.2 to 5/original defendants opposed the petition. My attention is invited to the impugned order by learned counsel for the respondent to point out that the ground stated in the application about the advocate concerned not keeping well, is not supported by any material. He submits that the trial Court had no option but to reject the application, and according to him rightly so.

4. Heard learned counsel for the petitioner and the respondents.

5. The application as filed is not happily worded. The evidence of the plaintiff was closed because on three successive dates, the Advocate for the plaintiff as well as plaintiff failed to remain present. In the application, it is stated that the advocate concerned lost track of the matter due to her illness. It is stated that the plaintiff did not remain present as he was not aware of the dates mentioned.

6. In my opinion, in the interest of justice, an opportunity can be granted to the plaintiff subject to costs. The plaintiff has filed an undertaking and the same is taken on record and marked "A". In the undertaking, the plaintiff has stated that he will not seek any

adjournment in the matter and undertakes to co-operate with the trial Court for effective disposal of the pending suit.

7. No doubt that there is a default on the part of the plaintiff, but the nature of the default is not such that the same cannot be condoned even by imposing cost.

8. Accordingly, subject to cost of Rs.5000/- to be paid by the plaintiff to the defendant nos. 2, 3, 4, and 5 within a period of two weeks from today, the application Exh. 48 can be allowed. The Plaintiff is permitted to lead evidence in the suit. The impugned order is set aside. The petitioner to abide by the undertaking given to this Court. In case there is any breach, the same may be viewed seriously by the trial Court and even this Court.

9. Writ Petition stands disposed of.

M. S. KARNIK J.

VINITA VIKAS
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