

Niti

IN THE HIGH COURT OF BOMBAY AT GOA

**SECOND APPEAL NO.23 OF 2023
AND
CIVIL APPLICATION NO.8 OF 2023**

Mrs. Maria Adelaide Pereira

....Appellant

Versus

Peter Savio Lourenco & Ors.

....Respondents

Mr Anthony D'Silva, Advocate for the Appellant.

Mr J.J. Mulgaonkar, Advocate for Respondent Nos.1 & 2.

CORAM: M. S. SONAK, J.

DATE : 27th JULY 2023

ORAL JUDGMENT:

1. Heard Mr Silva for the appellant and Mr J.J. Mulgaonkar for respondent nos.1 and 2.
2. Notice to respondent no.3 is not necessary because respondent no.3 is the appellant's son, who was also impleaded as a defendant in the suit.
3. The Second Appeal is admitted on the following substantial question of law:

Whether the learned District Judge was justified in setting aside the judgment and decree passed by the learned Trial Court in the absence of the counsel for the appellant during the Covid-19 pandemic and in total disregard of the directions issued by this Hon'ble Court that no adverse orders could be passed in absence of the parties or their counsels?

4. With the consent of and at the request of the learned Counsel for the parties, the appeal is taken up for final disposal.
5. The appellants are the original defendants, and the respondent nos.1 and 2 are the original plaintiffs in Regular Civil Suit No.92/2014/C.
6. The plaintiffs instituted the suit, complaining that the defendants had encroached on their property. A decree was applied to remove the encroachment and restore the property to the plaintiffs.
7. The Trial Court by judgment and decree dated 11.09.2018 dismissed the suit. The plaintiffs appealed to the First Appellate Court vide Regular Civil Appeal No.121/2018. The appeal was posted for hearing initially on 01.09.2020. On this date, due to the Covid-19 situation, the Court took up no proceedings, and the matter was adjourned to 07.09.2020.

8. On 07.09.2020, none of the parties or their advocates appeared due to the Covid-19 situation and the matter was adjourned to 19.09.2020.
9. On 19.09.2020, the advocate for the plaintiffs appeared, but there was no appearance on behalf of the defendants. Still, the matter was adjourned to 24.09.2020.
10. On 24.09.2020, the advocate for the plaintiffs argued the matter, but neither the defendants nor their advocate could appear on the said date.
11. On 30.09.2020, the appeal Court allowed the appeal and decreed the plaintiff's suit.
12. In September 2020, the entire country was reeling under Covid 19 Pandemic. From time to time, even directions have been issued to the Courts not to insist upon regular appearances or, in any case, not to make as far as possible any adverse orders against parties or their advocates who do not appear.
13. Considering the above circumstances, the appeal should not have been considered in the absence of the defendants or their advocate. Mr Mulgaonkar submitted that despite Covid 19, the advocate for the plaintiffs appeared in the matter.

14. Although this may be correct, the appellate Court should have appreciated that during Covid 19, everyone could not appear. No adverse order should have been made against the defendants, who did not appear or could persuade their advocate to appear. Denial of fair opportunity and effective access to justice during Covid 19 pandemic raises a substantial question of law. This is not a case where, in normal times, a party has consistently remained absent or abandoned the appeal. Therefore, the Court should not have adopted one shoe fits all approach. Given the various directives to this effect, the Advocate or the parties might have thought that no adverse orders would be made until normalcy returned.

15. On the above short ground, the substantial question of law, as framed, is answered favouring the appellant. The impugned judgment and decree dated 30.09.2020 is set aside. The Regular Civil Appeal No.121/2018 is restored to the file of the First Appellate Court. The First Appellate Court is directed to dispose of Regular Civil Appeal No.121/2018 on its own merits and by following the law within three months of the parties filing a certified copy of this order.

16. The parties are to appear before the appeal Court on 07.08.2023 at 10.00 am and file the certified copy of this order.

17. The appeal is disposed of in the above terms without any cost order.

- 18.** The Civil Application does not survive, and it is disposed of.

M. S. SONAK, J.