

Esha

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 380 OF 2022

NORMAN VINCENT HERMENEGILDO
BARRETTO AND ANR. ... PETITIONERS
VS
CIANTIA BARRETTO ALIAS CYNTHIA
BARRETTO AND ANR. ... RESPONDENTS

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

Mr. Jatin Ramaiya, Advocate for the Respondents.

CORAM: B.P. COLABAWALLA, J.

DATED: 2nd MARCH 2023

ORAL ORDER:

1. The above Writ Petition is filed seeking to challenge the order dated 21.04.2022 passed by the Civil Judge Junior Division at Margao, in Regular Civil Suit No. 245/2019/C. By the impugned order, the Application filed by the Plaintiffs [the Petitioners herein] to withdraw their suit with the liberty to file a fresh suit was dismissed.

2. The ground on which withdrawal was sought with the aforesaid liberty, was that there were certain mistakes in the pleadings and/or there was a lack of pleadings which amounted to a “formal defect” under Order XXIII Rule 1 of the CPC and

therefore, withdrawal was sought with liberty to file a fresh suit. The Trial Court after examining everything, including the law, came to the conclusion that the ground on which withdrawal was sought with the liberty as aforesaid, did not amount to a “formal defect” as contemplated under Order XXIII Rule 1 of the CPC, therefore, did not allow the Plaintiffs to withdraw the suit with liberty as prayed for.

3. Having gone through the impugned order, I find that there is absolutely nothing wrong with the view taken by the Trial Court. The Trial Court has in fact categorically recorded that all the so-called defects highlighted in paragraphs 3(i) to (v) of the Application filed by the Plaintiffs, can be easily cured by them by moving an amendment Application and thereby incorporating in the plaint all the necessary particulars concerning the transaction between the parties, the relevant events which occurred, and the circumstances in which the payments were made and accepted. This being the case, I do not find that any interference is called for in the order dated 21.04.2022 passed by the Trial Court and which is impugned in the present Writ Petition.

4. In these circumstances, the above Writ Petition is dismissed. No order as to costs. It is clarified that this order shall

not preclude the Petitioners from filing an amendment Application before the Trial Court. If such an Application is filed, the same shall be decided on its own merits and in accordance with law.

5. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

B.P. COLABAWALLA, J.

VAIGANKAR
ESHA SAINATH

Digitally signed by VAIGANKAR
ESHA SAINATH
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