

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 797 OF 2014

Mr. Sylvestre Rocha
@ Silvestre Rocha,
s/o Pascoal Joa Rocha,
aged 61 years,
r/o House No.1115,
Lankdem, Carona,
Aldona, Bardez Goa.

... Petitioner

Versus

1 Mr. Chandrakant P. Bhagat,
Major of age, widower

2 Mr. Prabhanand C. Bhagat,
S/o Chandrakant Bhagat,
Major of age,

3 Mrs. Sharmila P. Bhagat,
Wife of Prabhanand Bhagat,
Major of age,
All residents of H.No.78/1,
Coimavaddo, Aldona,
Bardez Goa.

4 Mrs Aneanjila Gonsalves,
widow of late Bernardo
Incio Gonsalves,
Major in age,

5 Mr. Jeeto Gonsalves,
son of late Bernardo Inacio Gonsalves,
Major in age,

6 Mrs. Tereza Gonsalves,
Wife of Mr. Jeeto Gonsalves,
Major in age,

7 Mr. Maxi Gonsalves,
Son of late Bernardo Inacio Gonsalves,
Major in age,
All residents of H.No.276,
St. Tome Mollar, Corlim,
Ilhas Goa.

... Respondents

Mr. A. D. Bhobe and Ms. A. Kuvelkar, Advocates for the
Petitioner.

Respondents absent though served.

CORAM: M. S. SONAK, J.

DATED : 10th FEBRUARY 2023

ORAL JUDGMENT

1. Heard Mr Bhobe, learned counsel for the Petitioner. The Respondents, though served, have not appeared.

2. The challenge in this petition is to the order dated 09.09.2014 by which the learned trial Judge has declined to condone the delay of 227 days in applying for restoration of the suit, which came to be dismissed for default.

3. The Petitioner has explained that he was abroad, and his Advocate lost track of the matter and did not realize that the same had been dismissed for default. Mr Bhobe points out that even the defendants in the suit hardly attended to the matter. He pointed out

that the evidence was concluded in the matter, and the suit was posted for final hearing on 14.06.2013. On this date, it is the defendants who applied for an adjournment. After that, the matter was dismissed, and there was a delay on the part of the Advocate to apply for restoration.

4. The Trial Court held that it was the duty of the Petitioner to follow up with his Advocate. The trial Court also held that the Petitioner/plaintiff was not diligent enough in pursuing the matter even after the suit was dismissed for default.

5. Considering the cause shown, although it is true that there was some lapse on the part of the Petitioner or his Advocate, the lapse was not of a degree that should entail dismissal of the suit or at least denial of restoration. Mr Bhobe pointed out that the suit is for recovery of an amount of ₹12 lakhs which the Petitioner paid for the purchase of property pursuant to an agreement. However, neither was the property delivered nor was the amount returned. Hence, the suit was for recovery of the amount.

6. Upon cumulative consideration of the cause shown, the delay should have been condoned. Prejudice, if any, to the Respondents could always be compensated by award of costs.

7. Accordingly, the impugned order is set aside subject to the Petitioner depositing the costs of ₹15,000/- before the trial Court within four weeks from today. If the costs are deposited, the Respondents should be permitted to withdraw the same

unconditionally. However, if the costs are not deposited, this petition shall be dismissed with costs of ₹15,000/-.

8. Now that the delay is condoned subject to the deposit of costs, the trial Court is to consider the application for restoration on its own merits and in accordance with the law.

9. The parties are to appear before the trial Court on 14.03.2023 at 10.00 a.m. Accordingly, the Petitioner must file an authenticated copy of this order before the trial Court.

10. If for any reason, the Respondents do not appear, the trial Court should serve a fresh notice on them because considerable time has elapsed in the matter, and they may not know this order. The Petitioner would also have to take steps to serve the Respondents/Defendants in the suit if they do not appear before the trial Court.

11. Mr Bhobe states that the authenticated copy of this order will be sent to the Respondents by post.

12. The rule is made absolute in the above terms. All concerned are to act on the authenticated copy of this order.

M. S. SONAK, J.