

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 61 OF 2023

Shakuntala Shrirang Naik & 3 Ors. ... Petitioners
Versus
Shri Veer Hanuman Devalaya Thr. Its ...Respondent
present Managing Committee

Mr. John A. Lobo, Advocate *for the Petitioners.*

Mr. A. D. Bhobe, Advocate *with Ms. Shaizeen Shaikh,*
Advocate for the Respondent.

CORAM: M. S. KARNIK, J
DATED: 19th JULY 2023

ORAL ORDER

1. Heard Mr. Lobo, learned counsel for the petitioners and Mr. Bhobe, learned counsel for the respondent.
2. The challenge in this petition is to the judgment and order dated 25.07.2022, passed by the Additional Collector, North Goa, Panaji, dismissing the revision filed by the petitioners. The revision was filed by the petitioner before the Additional Collector challenging the order dated 29.07.2019 passed by the Joint Mamlatdar-II of Tiswadi Taluka, whereby an application filed by the petitioner under section 4 of the Mamlatdar's Court Act, 1966, has been dismissed for non-prosecution. The roznama is produced on record. The roznama reveals that prior to 08.01.2019, the Advocate for the applicant

regularly attended the proceedings before the Mamlatdar. On 08.01.2019, 29.01.2019, 19.02.2019 and 26.03.2019, as the PO was not available, the matter was adjourned. The Advocate for the applicant did not appear on 20.06.2019, 18.07.2019 and 29.07.2019, which were the adjourned dates. The application, therefore, came to be dismissed for non-prosecution on 29.07.2019.

3. According to the learned counsel for the petitioners, the Advocate for the petitioners was regularly attending the proceedings prior to 08.01.2019. On four dates i.e. 08.01.2019, 29.01.2019, 19.02.2019 and 26.03.2019, the PO was not present. It is then submitted that because of the writ petition which was pending in the High Court, the matter was not being heard before the Mamlatdar. The proceedings before this court in Writ Petition no. 1115 of 2018 pertained to a challenge to an order passed by the revisional authority vacating the interim protection that was granted by the Mamlatdar during the pendency of the proceedings. By an order dated 13.06.2019, this court confirmed the order passed by the revisional court thereby dismissing the petition filed on behalf of the petitioners. In paragraph 12, this court directed the Mamlatdar to decide the main application as expeditiously as possible and preferably within a period of six months from the receipt of this court's order.

4. Shri Bhobe, learned counsel for the respondent, was at pains to point out that it is in the light of the directions of this court that the Mamlatdar proceeded to hear the application. Despite knowledge of the order passed by this court on 13.06.2019, the Advocate for the applicant failed to remain present on 20.06.2019, 18.07.2019 and 29.07.2019, with the result, the Mamlatdar had no option but dismiss the application for non-prosecution.

5. I do find some substance in the submission of Shri Bhobe, learned counsel for the respondent. The learned counsel for the petitioners submitted that the petitioners are agriculturists. They are praying for an access to their property through the land of the respondent. The petitioner no.4 is working as LDC in one of the departments in State of Goa.

6. In my opinion, though there is default on the part of the petitioners, it cannot be said that the petitioners have been casual in their approach or that they were not diligent in attending the proceedings, as the roznama would reveal that they have regularly attended the cases in the past on several occasions. It is only after the matter was adjourned on as many as four occasions, when the PO was not present, that the application was listed on three occasions when the petitioners and their Advocate failed to remain present. It is not as if the default cannot even be condoned by imposing appropriate

cost. The petitioners should not be deprived of an opportunity of hearing their application on merits. The impugned order of the revisional court and that of the Mamlatdar is set aside. The Mamlatdar to hear the proceedings expeditiously.

7. The parties to remain present before the Mamlatdar on 02.08.2023 at 11.00 a.m.. The petitioner no.4 to pay to the respondent cost of Rs.25,000/- within a period of two weeks from today. Shri Bhobe, learned counsel for the respondent, graciously submitted that the cost would be utilised by the respondent for a pious cause.

8. Petition is allowed with cost.

M. S. KARNIK, J

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