

Esha

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 604 OF 2022

1. Indumati K. Simepuruskar (Since Deceased), Age 82 at the time of death, Wife of late Shri. Khemu Simepuruskar, Aged 80 years, Indian National, Resident of House No. 5/187/A, Umtavaddo, Calangute, Bardez-Goa.

1(a) Mr. Devanand K. Simepuruskar, Age 61, son of late Indumati Simepuruskar

1(b) Rajan K. Simepuruskar Age 51, son of late Indumati Simepuruskar

1(c) Smt. Resma R. Simepuruskar Age 49, son of Rajan K. Simepuruskar

All residents of Umtavaddo, Calangute, Bardez, Goa.

2. Mr. Sanjiv K. Simepuruskar Age 51, Son of late Shri. Khemu Simepuruskar, Indian National, Resident of House No. 5/187/A, Umtavaddo, Calangute, Bardez-Goa.

... Petitioners

Versus

1. Smt. Sharaddha Shrikant Bandekar (Since Deceased) Wife of late Shrikant Bandekar, Aged about 50 years, Indian National, Resident of Umtavaddo, Calangute, Bardez-Goa.

1(a) Mr. Paresh Shrikant Bandekar, Son of late Shrikant Bandekar, Major

of age, bachelor, r/o H. No. 239, Umta Vaddo, Calangute, Bardez, Goa.

1(b) Mr. Pranay S. Bandekar, Son of late Shrikant Bandekar, Major of age, bachelor, r/o H. No. 239, Umta Vaddo, Calangute, Bardez, Goa.

1(c) Mr. Pankaj S. Bandekar, Son of late Shrikant Bandekar, Major of age, bachelor, r/o H. No. 239, Umta Vaddo, Calangute, Bardez, Goa.

1(d) Mrs. Praiksha Gautam Assonodkar Daughter of late Shrikant Bandekar, Wife of Mr. Gautam Assonodkar, r/o H. No.597, Porvorim, Socorro, Bardez, Goa.

1(e) Mr. Gautam Assonodkar, Major of age, R/o H. No. 597, Porvorim, Socorro, Bardez, Goa.

... Respondents

Mr. Terence Sequeira, Advocate for the Petitioners.

CORAM: B.P. COLABAWALLA, J.

DATED: 10th JANUARY 2023

ORAL JUDGMENT:

1. Rule.
2. I have heard the learned Counsel for the Petitioners finally.
3. The service is complete on the Respondents. Despite this, none has appeared on their behalf.

4. In the present Writ Petition, a challenge is laid to the impugned Roznama dated 28th November 2022, passed by the Civil Judge Junior Division, Mapusa in Regular Civil Suit No. 11/2018/G, in which, the evidence of the Plaintiffs was closed and the matter was posted for evidence of the Defendants.

5. By Roznama dated 4th November 2022, the Plaintiffs [Petitioners herein] were directed to furnish their affidavit in evidence eight days in advance prior to the next date [i.e. on or before 20th November 2022], failing which, no affidavit in evidence would be considered. The matter was thereafter fixed for examination in chief/cross examination on 28th November 2022.

6. On 28th November 2022, an affidavit in evidence on behalf of the Plaintiffs was tendered to the Court and was also served on the Advocate for the Defendants. However, the same was not taken on record as the same was not filed by 20th November 2022. It is in these circumstances, the impugned Roznama dated 28th November 2022 records that the Plaintiffs' evidence stands closed.

7. The learned Advocate appearing on behalf of the Petitioners submitted that this is a very harsh order, specifically taking into consideration that the Plaintiffs have now, not been allowed any

evidence in support of their case. He submitted that the delay in filing the affidavit in evidence was not intentional inasmuch as Petitioner No. 2 was detained by the Police for the entire day on 9th November 2022 and proceedings under Section 133 of the Cr.P.C. were also initiated. It was because of this development that there was a delay in filing the affidavit in evidence. He submitted that the affidavit in evidence was tendered to the Advocate for the Defendants on 28th November 2022 itself, which was accepted by the said Advocate appearing on behalf of the Defendants. In these circumstances, he submitted that the Roznama dated 28th November 2022 be set aside and the Plaintiffs be allowed to lead evidence in Regular Civil Suit No. 11/2018/G.

8. I have heard the learned Counsel appearing for the Petitioners. I find considerable force in the argument canvassed on behalf of the Petitioners. The learned Trial Court on 28th November 2022 was unduly harsh in closing the Plaintiffs' evidence. Yes, there was a delay, but it does not appear that the delay was intentional. The Trial Court has not come to the conclusion that the Plaintiffs, in any way, were trying to delay the trial.

9. In these circumstances, I am of the view that the Plaintiffs' evidence ought not to stand closed. Accordingly, the following order is passed:

O R D E R

(a) The Plaintiffs are directed to file their affidavit in evidence before the Trial Court on or before 17th January 2023.

(b) The Trial Court is directed to take the affidavit in evidence of the Plaintiffs on record and thereafter, fix the above suit for cross examination of the Plaintiffs' witnesses as per the convenience of the Court.

10. The above Writ Petition is disposed of in the aforesaid terms. However, there shall be no order as to costs.

11. 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.