

Maria S.

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.93 OF 2022

PUNDALIK PANDHARI SAWANT AND 5 ... Petitioners
ORS.

Versus

MADHU RODY GAONKAR
AND 64 ORS ... Respondents

Mr Nigel Da Costa Frias with Ms Sonadevi Nishad,
Advocates for the Petitioners.

Mr Pranav S. Kakodkar, Advocate for Respondents 1 to 12
and 14 to 17.

Mr Manish Salkar, Government Advocate for Respondents
18 and 19.

CORAM: M. S. KARNIK, J
DATED: 15th MARCH 2023

P.C.

1. Heard learned counsel.
2. The petitioner challenges an order of dismissal for default in non-prosecuting an application for intervention Exhibit D-15 filed by them before the trial Court.
3. The plaintiffs had filed a suit for declaration that they are the owners of the suit property. The interveners claim to be co-owners. On 05.03.2021 the Advocate for the interveners was absent and, therefore, the application for intervention came to be dismissed. An application for restoration was filed. However, by order dated 17.11.2021 the application for restoration came to be dismissed. The

reason for rejection of the application was that the application for restoration was not maintainable under Section 151 of CPC and the other reason is that the applicant has not filed affidavit of the Advocate to justify and substantiate that he was very much present before the Court on the earlier dates of hearing.

4. Learned counsel for the respondent no.1 to 17 opposes the petition. It is submitted that the interveners have no right to file intervention application and that they only want to delay the suit. He further submitted that the affidavit of the Advocate indicating his presence on the earlier dates has not been filed.

5. The application for intervention was rejected as the Advocate for the intervener was not present. In the application it is stated that the Advocate concerned was occupied in some other Court and by the time he reached, the intervention application was already dismissed for non-prosecution.

6. In my opinion, considering that the default on the part of the Advocate was on that particular date, the restoration application could have been allowed by imposing costs rather than to reject the restoration application. The intervention application can be heard on merits. However, the petitioners must cooperate with the trial Court.

7. The petition is, therefore, allowed. The intervention application Exhibit D-15 is restored to file to be heard on its own merits and in accordance with law. The petitioners to cooperate and remain present on the next date when the intervention application is restored by the trial Court. The impugned order is set aside subject to

costs of Rs.2,000/-. The cost to be deposited in the trial Court within a period of 2 weeks from today.

8. Parties to appear before the trial Court on 27.03.2023 at 10:00AM along with copy of this order.

9. Petition is disposed of.

M. S. KARNIK, J