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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.160 OF 2024

IDA PASCOELA DA COSTA

... PETITIONER

Versus

CARINA LUCY DCOSTA REP. BY POA

INACIO DIAS AND ANR

... RESPONDENTS

Ms. Shaizeen Shaikh, Advocate for the petitioner.

Mr John A. Lobo, Advocate for respondent no.1

Mr Tarshish Pereira, Advocate for respondent no.2

CORAM:- AVINASH G. GHAROTE, J.

DATED :- 6th March, 2024

P.C.

Heard learned counsel for respective parties.

2. The petition challenges the order dated 15.12.2023 passed by the learned trial Court refusing to extend the date of filing the written statement on the ground that period of 90 days has expired from the date of serving of the summons.

3. The provisions in this regard under Order 8 Rule 1 of the CPC, has already been held directory in nature and therefore, it is in the discretion of the Court to permit the filing of the written statement in case a delay occurs and is explained.

4. In the instant case upon service of suit summon an application under Order 7 rule 11 (b) of the CPC came to be filed by the petitioner/defendant which was partly allowed on 14.9.2022 by

directing the respondents/plaintiffs to value the suit claim appropriately, and pay requisite Court fees thereupon which is reported to have been done on account of which the suit now stands transferred to Civil Judge, Senior Division. It is therefore apparent, the liability of the Petitioner/defendant to file the written statement came into effect consequent to the order date 14.9.2022 or for that matter upon payment of court fees by the plaintiff, inspite of which written statement has not been filed.

5. Learned counsel for the petitioner submits that an opportunity be granted to contest the suit on merits and any inconvenience caused to the plaintiff can always be compensated by cost. Though the petition is vehemently opposed by learned counsel for the respondents, however, considering that claim in a suit is to be decided on merits and not in default, impugned order is hereby quashed and set aside, and the petitioner/defendant is permitted to file written statement by 11.3.2024, subject to cost of Rs.10,000/- payable to respondent no.1 as a condition precedent.

6. Petition is accordingly allowed in the above terms.

AVINASH G. GHAROTE, J.