



Vinita

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.433 OF 2024
WITH
CIVIL APPLICATION NO. 51 OF 2024
IN
WRIT PETITION NO. 433 OF 2024.

1 Prashant Bhandari, Aged 39 years, married, service, And his wife

2 Mrs Santoshi Prashant Bhandari, Aged 38 years, married, Service, both Resident of Flat no.301, Shirish Enclaves, Corlim, Tiswadi, Goa.

.... Petitioners.

Versus

1. Mr Samir D. Kamat, 50 years, married, business, And his wife

2. Mrs Mitali Sameer Kamat, 50 years, married, service, Both Residents of
a) 401 Rose Royal Opp. Caesar Road, Near Sivasena Shakha, Amboli, Anderi(W) Mumbai, Maharashtra.
Alternative Address
b) Flat No. 401, On the 4th floor, "SHRISH ENCLAVES" Corlim, Tiswadi – Goa.

...Respondents.

Mr. Melwin Viegas, Advocate for the petitioners.
Mr John A. Lobo, Advocate for the respondents.

CORAM: BHARAT P. DESHPANDE, J

Dated: 16th August, 2024

ORAL JUDGMENT

1. Rule. Rule is made returnable forthwith.
2. Matter is taken up for final disposal at the admission stage with consent of the parties.
3. Petition is filed challenging the order dated 14.9.2023 passed by the learned trial Court thereby allowing the written statement to be taken on record after a period of 15 months from the date of service of summons on the defendants/ respondents.
4. Mr Viegas appearing for the petitioners submits that petitioners filed a suit and accordingly summons were issued. Suit summons were served on 7.9.2024. Initially time to file a written statement was extended. However, on 16.12.2021 an application was filed for further extension of time to file written statement on the ground that another suit is pending between the same parties and that present suit is required to be stayed. Stay application was filed and it was prayed that time to file a written statement be extended beyond 30 days from the date of disposal of the application for stay.

5. Mr Viegas, submits that this application was not even considered and only an order was passed on it “Filed”. He submits that copy of this application was not served on the plaintiffs.

6. Mr Viegas, submits that subsequently and after a period of 15 months, defendants suddenly presented a written statement on 2.2.2023. Plaintiff objected to filing of such a written statement by filing an application which is dated 6.2.2023.

7. Learned trial Court by the impugned order dated 14.9.2023 simply rejected the contention of the plaintiff on the ground that earlier application was filed on 16.12.2023 which was never objected by the plaintiff.

8. Mr Viegas submits that Order VIII Rule 1 of CPC mandates that a written statement is required to be filed within 30 days which could be extended up to 90 days. He would further submit that since the application dated 16.12.2021 was simply filed and no extension was granted, it was wrong on the part of the learned trial Court to accept the written statement on 2.2.2023.

9. Mr Lobo appearing for the respondents submits that another suit between the parties is pending and accordingly an order was passed to stay the present suit. However, along with stay application,

present application was filed for granting time to file a written statement beyond 30 days from the date of decision of the stay application.

10. Mr Lobo would submit that even otherwise reply filed by the respondents to the objections raised by the plaintiffs gives sufficient reasons as to why the written statement was not filed earlier.

11. The impugned order first of all nowhere decides the objection raised by the petitioner in connection with the time limit granted under Order VIII Rule 1 of CPC. It is for the defendants to explain as to why the written statement is not filed within time. Court is not entitled to accept the written statement beyond 90 days without giving any sufficient explanation and without recording its findings as to why such a written statement is required to be taken on record. Simply because the application was filed on 16.12.2021 with an order “Filed” and that plaintiff did not object to it, cannot be a ground for extending such a period. Duty cast on the Court to comply with the provisions of Order VIII Rule 1 of CPC and that too by recording reasons on an application filed by the defendants for extension of time beyond 90 days.

12. Since no such finding is given by the trial Court on the objection raised by the petitioners/plaintiffs, matter needs to be

remanded to decide the objection raised by the plaintiffs/petitioners, in accordance with provision of Order VIII Rule 1 of CPC.

13. Impugned order is therefore quashed and set aside. Matter is remanded to the trial Court with a direction to decide the objection raised by the petitioners dated 6.2.2023 afresh and by giving opportunity to the other side.

14. Rule is made absolute. Petition stands disposed of in the above terms and pending applications if any stand disposed of.

15. Parties to act on the duly authenticated copy of this order.

BHARAT P. DESHPANDE, J.