

Esha

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 157 OF 2024

1. Shri. Eknath Prabhakar Moraskar, 63 years of age, Son of Prabhakar Moraskar, Resident of House no. 53/F, Boavista, Near Ice factory, Bastora, Bardez, Goa.
2. Mrs. Shraddha Eknat Moraskar, 59 years of age, Resident of House no. 53/F, Boavista, Near Ice factory, Bastora, Bardez, Goa.
3. Shri. Sunil Prabhakar Moraskar, 55 years of age, Son of Prabhakar Moraskar.
4. Sangeeta Sunil Moraskar, 50 years of age,
5. Shri Samit Prabhakar Moraskar, 53 years of age, Son of Prabhakar Moraskar, Both resident of House no. 16/3, Near Union Bank, Punola, Ucassaim, Bardez, Goa.
6. Mrs. Swati Samit Moraskar, 50 years of age, Resident of House no. 16/3, Near Union Bank, Punola, Ucassaim, Bardez, Goa. ... PETITIONERS

Versus

1. Shri. Chandrakant Gopal Prabhu Dessai (Expired)
- 1a). Smt. Manjusha Ajit Kamat, Major of age, Daughter of late Chandrakant Prabhu Dessai, and her husband;
- 1b). Shri. Ajit Anant Kamat, Major of age, Both resident of 1121/A, St.

Moddi, Chinchinim, Salcete, Goa.

- 1c). Smt. Deepali Dilip Hegde, Major of age, Daughter of late Chandrakant Prabhu Dessai, and her husband;
- 1d). Shri. Dilip Vasant Hegde, Major of age, Both residents of House no. 391/2, Behind Central Bank of India, ZerilaBhat, Avedem, Quepem, Goa.
- 1e). Smt. Madhavi Jaiwant Pai Kuchelkar, Major of age, Daughter of late Chandrakant Prabhu Dessai, and her husband;
- 1f). Shri. Jaiwant Gurudas Pai Kuchelkar, Major of age, Both residents of House no. 225, Sundharpeth, Sanquelim, Goa.
- 1g). Smt. Swapna Krishnakumar Prabhu Verlekar, Major of age, Daughter of late Chandrakant Prabhu Dessai, and her husband;
- 1h). Shri. Krishnakumar Shyamsundar Prabhu Verlekar, Major of age, Both residents of House no. 47, Tallapwada, Near Vithal Rakhumai Temple, Kumbharjua Goa, Post Marcel – 403 107.
2. Smt. Rohini Chandrakant Prabhu Dessai, Major of age, Resident of 207/A, Gaonwadda, Dhargal, Pernem, Goa.
3. Shri. Prakash Gopal Prabhu Dessai, Major of age, Son of late Gopal Prabhu Dessai and his wife;
4. Smt. Rajalaxmi Prakash Prabhu Dessai, Major of age, Both residents of 207/A, Gaonwadda, Dhargalim, Pernem, Goa.

... RESPONDENTS

Mr. Ashwin D. Bhobe with Ms. Shaizeen Shaikh, Advocates
for the Petitioners.

Ms. Analiz Menezes, Advocate for Respondent No. 1(a).

CORAM: BHARAT P. DESHPANDE, J.

DATED: 14th FEBRUARY 2024

ORAL JUDGMENT:

1. Heard Mr. Bhobe for the Petitioners and Ms. Menezes for Respondent No. 1(a).
2. Rule. Rule returnable forthwith.
3. Heard the parties with consent for final disposal.
4. The challenge in the present Petition is to the rejection of reopening of the evidence of the Petitioners/Defendants on the ground that though Defendant No. 3 was present, the Advocate for Defendant No. 3 was absent due to some personal difficulty.
5. Mr. Bhobe would submit that on 23.03.2023, the learned Counsel for Defendant No. 3 was in some personal difficulty and therefore, Defendant No. 3 filed an Application for grant of adjournment.

6. Defendant No. 3 was present in person, however, the learned Trial Court dismissed such Application stating that there is no ground mentioned therein. Similarly, the learned Court closed the defence evidence and the matter was posted for final arguments.

7. Mr. Bhobe submits that on the next date i.e. on 15.04.2023, an Application was filed by Defendant No. 3 for reopening of the evidence stating that his Advocate was in personal difficulty on the earlier date i.e. on 23.03.2023. The say of learned Counsel for the Plaintiffs stated that the ground being about the personal difficulty of the Advocate, he did not object to such Application. However, the learned Trial Court dismissed such an Application, which is challenged in the present Petition.

8. Mr. Bhobe would submit that the impugned order suffers from non-application of mind for the simple reason that the parties should not suffer for the absence of the Advocate.

9. The learned Counsel for Respondent No. 1(a) fairly submitted that the adjournment Application was not opposed, which was filed on 23.03.2023 as well as the Application for reopening of the evidence filed on 15.04.2023.

10. A perusal of the impugned order shows that the learned Trial Court considered that the Application for reopening was filed by the Advocate who was unable to appear before the Court on 23.03.2023 whereas arguments were advanced on the Application for reopening by a new Advocate.

11. First of all, the record would go to show that Defendant No. 3 was very much present before the Court on 23.03.2023 and an Application was moved for adjournment stating that his Advocate was in personal difficulty to appear on 23.03.2023. Though such an Application was not objected to by the other side, it was dismissed only on the ground that the Application was without any cogent reasons.

12. Mr. Bhobe would submit that the Application filed on 23.03.2023 by Defendant No. 3 in person for adjournment might not have been properly worded, but, it was conveyed to the Court that adjournment is sought due to personal difficulty of the Advocate. Similarly, the Application for re-opening of the evidence filed on 15.04.2023 also disclosed the same ground as found in paragraph 1 itself.

13. It is well settled that the parties should not suffer because of any act of the Advocate. In this matter, though Defendant No. 3 was very much present in the Court, his Advocate was absent due to personal difficulty. That itself is a sufficient ground for a grant of adjournment. The Trial Court at the most and if objected by the other side could have imposed costs.

14. The next aspect is the date fixed for final arguments by closing the defence evidence. The absence of the Advocate was on 23.03.2023 whereas the next date was fixed on 15.04.2023. The Trial Court could have easily granted time in between for the Defendants to lead evidence. By closing the defence evidence, a valuable right of the Defendants to defend their case and that too without their fault is taken away.

15. The impugned order, therefore, clearly shows non-application of mind and an improper exercise of jurisdiction. Closing evidence of the parties could be considered as a last resort. Accordingly, the impugned order needs interference.

16. The learned Counsel for Respondent No. 1(a) submits that the matter has been pending since long for defence evidence.

Defendant Nos. 3 to 5 are directed to produce their evidence as early as possible so that the suit can be decided.

17. The impugned orders dated 23.03.2023 and 15.04.2023 are quashed and set aside. Defendant Nos. 3 to 5 are permitted to lead defence evidence.

18. Rule is made absolute in the above terms.

BHARAT P. DESHPANDE, J.

VAIGANKAR
ESHA SAINATH

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VAIGANKAR ESHA SAINATH
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