

(2012) 02 BOM CK 0209

Bombay High Court (Goa Bench)

Case No: Writ Petition No. 120 of 2012

Mrs. Parvati Mahadev
Haldankar and Others

APPELLANT

Vs

Mr. Santosh Tukaram
Haldankar Haldankar

RESPONDENT

Date of Decision: Feb. 24, 2012

Hon'ble Judges: F.M. Reis, J

Bench: Single Bench

Advocate: Smita Gawas, for the Appellant; Gaurish Agni, for the Respondent

Judgement

F.M. Reis, J.

Heard Ms. Gawas, learned Counsel appearing for the Petitioners and Mr. G. Agni, learned Counsel appearing for the Respondent.

2. Rule. Heard forthwith with the consent of the learned Counsel. Learned Counsel appearing for the Respondent waives service.

3. The above Petition challenges the Order passed by the learned Civil Judge, Junior Division, Valpoi, dated 22.12.2011, whereby an application filed by the Petitioner to permit the filing of the written statement by one day came to be rejected.

4. The learned Counsel appearing for the Petitioners has assailed the impugned Order essentially on the ground that there was justifiable reason for the Petitioners to seek an adjournment for one day as, the Petitioner, who was supposed to file the written statements, was out of station and, as such, the Petitioners were not able to file the written statement on the notified date. Learned Counsel further pointed out that considering the facts of the case and taking note of the fact that the Petitioner was out of station, a liberal view ought to be taken by the learned Judge to allow the Petitioners to file the written statements on the subsequent date. Learned Counsel further pointed out that grave injustice will occasion to the Petitioners in case the impugned Order is not set aside.

5. On the other hand, Shri Agni, learned Counsel appearing for the Respondent, has supported the impugned Order and pointed out that the Petitioners had taken substantial period of time to file the written statements much beyond what is contemplated under Order VIII of the Civil Procedure Code. Learned Counsel further pointed out that the question of granting any discretion in favour of the Petitioners in such circumstances would not arise. However, it is not disputed that the adjournment sought for by the Petitioners was only for one day.

6. Having heard the learned Counsel and on perusal of the record and taking note of the fact that the Petitioner no. 11 was out of station, I find that in the interest of justice, an opportunity can be given to the Petitioners to file their written statements subject to payment of costs to the Respondent. This view is taken in the peculiar facts and circumstances of the case taking note of a justifiable reason given by the Petitioners to file written statements after one day only. Apart from that the records reveal that the application for rejection of plaint was dismissed by Order dated 11.10.2011 and the application for amendment filed by the Respondents/Plaintiffs was allowed by Order dated 11.10.2011. In such circumstances, allowing the filing of written statements after one day would have met the ends of justice.

7. In view of the above, I pass the following :

ORDER

(i) The Order dated 22.12.2011 is quashed and set aside.

(ii) The Petitioners are permitted to file their written statements on 29.02.2012, subject to payment of costs of Rs. 2,000/- to the Respondent herein as condition precedent. It is made clear that no further adjournments will be granted to the Petitioners to file written statement.

(iii) Rule disposed of in the above terms.

(iv) Petition stands disposed of with no orders as to costs.

8. Authenticated copy of this Judgment be issued to the parties in accordance with law.