

(2012) 06 BOM CK 0095
In the Bombay High Court
Case No : Writ Petition No. 386 of 2012

Mr. Mahadev Parsekar, (since deceased) through his legal heirs. Mr. Pritam Mahadev Parsekar and Others, Mrs. Champa M. Parsekar, Mrs. Ramila Mahadev Parsekar, Widow and Mr. Mahesh Mahadev Parsekar APPELLANT

Vs

Mr. Eduardo Simao D"Costa @ Edward S. D"Costa, alias Edward Simon D"souza and his wife and Mrs. Priscila D"Costa RESPONDENT

Date of Decision : 21-06-2012

Acts Referred:

Citation : (2012) 06 BOM CK 0095

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

Bench : Single Bench

Advocate : J. Godinho, for the Appellant; Sudin Usgaonkar, for the Respondent

Judgement

F.M. Reis, J.—Heard Shri J. Godinho, learned Counsel appearing for the petitioners and Shri Sudin Usgaonkar, learned counsel appearing for the respondents. Rule. Heard forthwith by consent of the learned counsels.

2. The learned counsel appearing for the respondents waives service.

3. The above petition challenges the orders passed by the learned Civil Judge Junior Division, Ponda dated 02.01.2012 and 12.03.2012 whereby the cross of the petitioners in respect of PW1 and PW2 came to be closed. Shri J. Godinho, learned counsel appearing for the petitioners has assailed the impugned orders essentially on the ground that the petitioners have never sought any adjournment during the course of the evidence of the respondents but however for the first time on 02.01.2012 when the petitioners sought an adjournment to continue the cross examination of PW1, the learned Judge dismissed the application. The learned counsel further points out that thereafter the petitioners filed an application to recall the said order which also came to be rejected. The learned Counsel further points out that PW2 was thereafter examined and his evidence came to be closed by the learned Judge on 12.03.2012 declining the

request of adjournment by the petitioners. The learned Counsel further points out that considering that the petitioners had not sought for three adjournments as provided by the Amended Civil Procedure Code, the learned Judge has acted in material irregularity whilst passing the impugned orders which resulted in irreparable injustice to the petitioners. The learned counsel as such submits that the impugned orders deserve to be quashed and set aside as otherwise the irreparable damage would occasion to the petitioners.

4. On the other hand, Shri Sudin Usgaonkar, learned counsel appearing for the respondents though does not dispute the number of adjournment sought by the petitioners nevertheless points out that on a false ground the adjournment was sought and as such the learned Judge was justified to pass the impugned orders as the suit has been expedited. The learned Counsel further submitted that on false pretext, the petitioners were delaying the matter. The learned counsel further points out that thereafter PW3 has already been examined and the evidence of the respondents has already been closed. The learned counsel further points out that even assuming this Court set aside the impugned orders, some costs may be awarded to the respondents.

5. I have duly considered the submissions of the learned counsels and I have perused the records. It appears that the contention of the learned Counsel appearing for the petitioners that the petitioners had sought an adjournment for the first time on 02.01.2012 appears to be correct. Considering the said aspect, I find that the learned Judge was not justified to dismiss the application for adjournment on 02.01.2012. So also with regard to the order passed on 12.03.2012, considering that the petitioners had not availed of adjournments as provided under the Amended Civil Procedure Code, the learned Judge was not justified to close the cross examination of PW2. Though seeking an adjournment is not a matter of right but considering justifiable reasons shown by the petitioners, the learned Judge could have taken a liberal view in the peculiar circumstances of the case.

6. Considering overall facts and circumstances of the case and in the interest of justice, the petitioners should be given an opportunity to proceed with the cross examination of PW1 and PW2 subject to payment of costs to the respondents which is quantified at Rs. 2000/-.

In view of the above, I pass the following :

ORDER

(i) Rule is made absolute in terms of prayer (a) subject to the petitioners paying costs of Rs. 2000/- to the respondents as condition precedent.

(ii) The petition stands disposed of accordingly.