
(2015) 02 BOM CK 0345
In the Bombay High Court
Case No : Writ Petition No. 533 of 2014

Olavo Aleixo Barbune Fernandes

APPELLANT

Vs

Maria De Conceicao Afonso and Others

RESPONDENT

Date of Decision : 18-02-2015

Acts Referred:

Citation : (2016) 2 ALLMR 191 : (2015) 5 BomCR 325

Hon'ble Judges : N.M. Jamdar, J.

Bench : Single Bench

Advocate : F.E. Noronha, for the Appellant; M.B. Da Costa, Senior Advocate and Karishma Betquecar, for the Respondent

Final Decision : Dismissed

Judgement

N.M. Jamdar, J.—Rule. Rule made returnable forthwith. Ms. K. Betquecar, learned Counsel waives service on behalf of respondents No. 1 & 2 respondents No. 3 & 4 have been served in this petition. They were ex-parte before the courts below. Taken up for final disposal. The petitioner challenges the order passed by the Civil Judge, Senior Division, Panaji dated 13 March 2012 and the order passed by the District Judge, Panaji dated 6 May 2014. By the impugned order, the learned Civil Judge dismissed the objections raised by the petitioner in the inventory proceedings. This order has been confirmed by the District Court, by dismissing the appeal filed by the petitioner.

2. The learned Civil Judge dismissed the objections filed by the petitioner on the ground that the objections were not supported by any documents, and also that the expenditure claimed by the petitioner cannot be considered in the eyes of law. The petitioner had stated in his objection that he had incurred certain expenses towards treatment of his wife, who 3 W.P. No. 533 of 2014 was terminally ill and later passed away, and since he was staying abroad, expenses were incurred for international travel. The learned District Judge came to the conclusion that such objections are not traceable to any provision in the family laws applicable in the State of Goa. The learned Civil Judge mainly dismissed the

application on the ground that there was no documentary proof annexed to the application in support of the expenditure claimed. Thereafter, the District Court dismissed the appeal on a wider proposition that none of these expenses can be claimed in law.

3. Mr. Noronha, the learned Counsel for the petitioner submitted that the expenses for treatment of his wife, whose estate was also in question, are permissible to be claimed. This question of law would arise if the petitioner crosses the first threshold of showing some prima facie proof of expenses. What the learned Civil Judge has done is a summary rejection of the objections, on the ground that nothing was produced in support. Considering the nature of proceedings and the expenses claimed, an opportunity ought to have been given to the petitioner to substantiate the claim if that was the lacuna.

4. Once the petitioner crosses the first hurdle then the case could be considered under Article 1380 of the Portuguese Civil Procedure Code, 1939 (for short, The Code). Article 1380 lays down a methodology when lack of description of property in the inventory proceedings is complained of. It postulates that when the dispute cannot be summarily decided because there is necessity of investigation, then the parties have to 4 WP No. 533 of 2014 pursue ordinary remedy, and the inquiry proceeds in respect of remaining property. However, by the impugned order, the petitioner is not allowed to even reach the stage of Article 1380. To my mind, it will be appropriate to give an opportunity to the petitioner to substantiate his claim and then adopt the procedure laid down in Article 1380.

5. Mr. M.B. Da Costa, learned Senior Counsel for the respondents No. 1 & 2 submitted that under the Code the objector has to object within a stipulated time and expeditiously, however, the petitioner raised objection after a period of almost one year. He submitted that though no reply was filed by the respondents No. 1 & 2, if indulgence is to be shown to the petitioner, respondents No. 1 & 2 also should be permitted to file their reply. This request is reasonable. Accordingly, the petition is disposed of by quashing and setting aside the impugned orders passed by the District Judge and the learned Civil Judge. The learned Civil Judge will consider the objections raised by the petitioner by giving him an opportunity to substantiate his claim in a time bound manner and thereafter proceed with the matter as per Article 1380 of the Code. It will be open to the respondents No. 1 & 2 to file their reply to the objections. All contentions on merits are kept open. Rule made absolute in above terms. No costs.