

(2013) 07 BOM CK 0265
In the Bombay High Court
Case No : Writ Petition No. 67 of 2010

Trafford D"Souza Teodoro D"Souza	Vs	APPELLANT
Administrator of Comunidades and Another		RESPONDENT

Date of Decision : 09-07-2013

Acts Referred:

Citation : (2013) 5 BomCR 628

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

Bench : Single Bench

Advocate : Valmiki Menezes, for the Appellant; P.A. Kamat, for the Respondent

Judgement

F.M. Reis, J.—Heard Mr. V. Menezes, learned Counsel appearing for the petitioner and Mr. P.A. Kamat, learned Counsel appearing for respondent No. 2. The above petition challenges an order passed by the respondent No. 1 dated 24.9.2009 and the judgment dated 4.12.2009 passed by the learned Tribunal in Comunidade Appeal No. 18/2009.

2. Mr. V. Menezes, learned Counsel appearing for the petitioner has assailed the impugned judgment on two counts. It is the contention of the petitioner that the learned Tribunal has come to the conclusion that the appeal preferred by the petitioner in terms of Article 44 of the Code of Comunidade was beyond the time prescribed when according to him the appeal was very much within the time stipulated under the said provisions of law. The learned Counsel further pointed out that the learned Tribunal has also considered the documents produced by the respondent No. 2 before the Tribunal to reject the claim of the petitioner when according to him the authenticity and correctness of the said documents have been seriously disputed by the petitioner. The learned Counsel further pointed out that such documents were not before the Administrator/respondent No. 1 and as such, it would be appropriate in the interest of justice that the matter may be directed to be reconsidered by the Administrator/respondent No. 1 after hearing the parties in accordance with law. The learned Counsel further pointed out that the contention of the respondents that the appeal preferred by the

petitioner is barred by limitation is totally untenable as according to him the appeal has been filed within the period of 8 days as contemplated in the said provisions of law.

3. On the other hand, Mr. P.A. Kamat, learned Counsel appearing for respondent No. 2 has supported the impugned judgment. The learned Counsel has pointed out that there is a resolution of the Comunidade disclosing that the petitioner has been expelled from being the member of the said Comunidade and as such, the question of including the petitioner as member of the Comunidade is totally uncalled for. The learned Counsel further pointed out that the respondent No. 2 was not duly served in the appeal before the respondent No. 1 and as such on account of their non appearance, the stand of the respondent No. 2 could not be put forward before the respondent No. 1. The learned Counsel further pointed out that the appeal preferred by the petitioner before the respondent No. 1 is barred by limitation and as such the appeal could not be considered by the respondent No. 1. The learned Counsel as such submits that no interference is called for in the impugned judgment.

4. I have carefully considered the submissions of the learned Counsel and I have also gone through the records. The record reveals that the learned Tribunal has allowed the appeal preferred by the respondent No. 2 by considering the documentary evidence produced by the respondent No. 2 before the learned Tribunal. It is not in dispute that such material was not available with the respondent No. 1 while disposing of the appeal preferred by the petitioner by order dated 24.9.2009. In that view of the matter, I find it appropriate without going into the correctness or otherwise of the rival contentions raised before this Court to direct the respondent No. 1 to decide the appeal preferred by the petitioner a fresh after hearing the parties in accordance with law. All contentions raised by both the parties with regard to the merits of the appeal preferred by the petitioner are left open including the point of limitation sought to be raised by the respondent No. 2. In view of the above, I pass the following:

ORDER

(i) The impugned judgment to the extent passed by the learned Tribunal dated 4.12.2009 in Comunidade Appeal No. 18/09 and the order dated 24.9.2009 passed by the respondent No. 1 are quashed and set aside.

(ii) The respondent No. 1 is directed to decide the appeal preferred by the petitioner a fresh after hearing the parties in accordance with law.

(iii) All contentions of both the parties on merits as well as the point of limitation raised by the respondent No. 2 are left open.

(iv) Rule is made absolute in above terms.

(v) The petition stands disposed of accordingly.