

Regular Civil Suit No. 54/2014/B

ORDER BELOW EXHIBIT D-45

(Delivered on this the 16th day of the month of August of the year
2017)

This is an application at Exhibit D-45 for setting aside Order dated 22.07.2016 and to give opportunity to Defendant No. 1 to file written statement.

2. It is the case of the said Defendant that Defendant no.1 was not aware about the suit being filed against her, which matter proceeded exparte. It is the case that she got the knowledge of the present suit only on 20.12.2016. It is the case that the presence and participation of Defendant no.1 in the suit is very necessary, essential and material which goes to the root that the false suit filed by the Plaintiff to grab the shop of Defendant no.1 who is a widow and senior citizen. Hence the present application.

3. The Plaintiff has filed reply at Exhibit D-50. It is the case that the Defendant intentionally evaded service of summons though she was served through her duly engaged agents, that is, Defendant nos.2 and 3. Defendant no.1 was regularly visiting the suit premises and was aware of the present proceedings. Further during the pendency of the suit Defendant no.1 had come to Goa, and specifically to the suit shop on 2 to 3 occasions. Defendant no.1 was in possession of the suit shop through Defendant no.3 who hotly contested the present suit, and also filed the appeal before the District Court. It is the case that Defendant no.1 was

aware of the proceedings and hence prayed that the application be dismissed.

4. As per records, summons were sent to Defendant no.1 on 23.05.2014. According to the said summons Defendant no.1 was abroad. Thereafter Defendant no.1 was sought to be served through Defendant no.3. Summons were issued on 01.11.2014. Defendant no.3 had informed that he was employee of Defendant no.2 and summons remained unserved. Thereafter by summons dated 05.12.2014 summons were sought to be served through Defendant no.2. The said summons also returned with endorsement that Defendant no.1 is abroad. Defendant no.2 stated that Defendant no.1 is abroad and that he has not been given any Power of Attorney.

5. On 03.02.2015, the Plaintiff had sought to serve the Defendant no.1 to be served through Defendant no.2 and 3, but the said application is dismissed. Thereafter on 14.01.2016 the Plaintiff filed application that Defendant no.1 be served by publication on the daily newspaper circulated in the State of Goa. It was ordered by Order dated 03.03.2016 so as to issue summons by affixing summons on the place of permanent registered address of Defendant no.1, as well as publication in newspaper circulated in the locality of permanent residential/business address of Defendant no.1. The publication was done in local newspaper 'Lokmat' dated 16.03.2016. The copy of the newspaper was annexed. Opportunity was given to Defendant no.1 and thereafter on 22.07.2016, matter

proceeded ex-parte against Defendant no.1. The present application is made on 03.01.2017.

6. When the matter was proceeding ex-parte against the Defendant no.1, the application for temporary injunction was partly granted. Defendant no.3 was directed by way of temporary mandatory injunction to restore the vacant and peaceful possession and enjoyment of the suit shop back to the Plaintiff. Further there are reliefs granted to the Plaintiff with respect to the suit shop.

7. Defendant no.1 has set out as to how she got to know about the present suit at paras 7, 8, 9, 10, 11 and 12 of the application. According to Defendant no.1 the shop of Defendant no.1 is given to the Plaintiff and Defendant no.1 wants to get the true facts. Defendant no.1 earns her livelihood from the business being carried out in the suit shop.

8. Ld. Advocate for the Plaintiff took my attention to the passport from which it can be seen that Defendant no.1 was present Goa when the present proceedings were going on. It is true that it is been seen from the stamps on the passport that Defendant no.1 had visited Goa during the proceedings in the present suit.

9. It is nowhere in dispute that Defendant no.1 was residing at Singapore. From the records it is seen that summons could not be served personally upon Defendant no.1 as she was abroad. It is true that attempts were made to serve Defendant

no.1. Thereafter Defendant no.1 was served by publication. The said newspaper was a local newspaper of Goa. It is nowhere shown that Defendant no.1 had knowledge of the present suit, but still did not appear. The Plaintiffs could not establish that Defendant nos.2 and 3 had informed Defendant no.1. Only because Defendant no.3 was holding the suit shop on behalf of Defendant no.1, does not establish that Defendant no.1 had knowledge of the suit shop. Similarly because Defendant no.1 had been visiting Goa, does not establish that Defendant no.1 had knowledge about the present suit.

10. The Plaintiff could not establish that Defendant no.1 had knowledge of the present suit. If it is the case of Defendant no.1 that she wants to show that her participation in the present suit is necessary, then opportunity has to be given as it could not be well established that Defendant no.1 had personal knowledge of the present suit. Hence, I am of the opinion that no prejudice will be caused to the Plaintiffs if the said Defendant No.1 is allowed to participate. However, it cannot be ignored that the present suit is of the year 2014, and several attempts were made to serve Defendant no.1. It is true that it is nowhere established that Defendant nos.2 and 3 had informed Defendant no.1, but it cannot be ignored that Defendant No.2 is the brother-in-law of Defendant No.1. Defendant No.2 has also admitted that he was authorized to look after and manage the things of Defendant No.1. Further, Defendant No.2 has also admitted that Defendant no.3 is kept in the shop being a mechanic. It is highly unbelievable that Defendant nos. 2 and 3 had no contact with Defendant no.1, and that,

Defendant no.1 did not know about the matter. However, one cannot proceed on presumption. Moreover, it cannot be ignored that inconvenience has been caused to the Plaintiff while serving Defendant no.1. Considering the relation between Defendant nos. 2 and 3, Defendant no.1 could have very well gained knowledge about the present suit. Considering the inconvenience caused to the Plaintiff, Defendant no.1 to pay costs of ₹ 5,000/- to the Plaintiff.

11. With this background, the application at Exhibit D-45 is granted on payment of costs of ₹ 5,000/- to the Plaintiff. The ex-parte Order dated 22.07.2016 is set aside. Opportunity is given to Defendant no.1 to file written statement and reply on the application for temporary injunction within a period of 30 days.

Ponda.

Dated:- 16.08.2017

(Sarika N. Fal Dessai)
Civil Judge, Junior Division
"B" Court, Ponda Goa.

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