

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA
CIVIL REVISION APPLICATION NO. 1 OF 2024
WITH
MISC. CIVIL APPLICATION NO. 1519 OF 2022 (F)
AND
MISC. CIVIL APPLICATION NO. 1480 OF 2022 (F)

Maria Veronica Aliana Dias e Velho @ ... Applicant
Veronica Velho, Thr. Next friend Verner
Aleixo Velho

Versus

Vikram Fernando Velho @ Vikram Velho & 4 ... Respondents
Ors.

Mr. Gaurish Agni, Advocate for the Applicant.

Mr. Pavithran AV, Advocate for the Respondent no. 1.

Mr. Kaif Noorani, Advocate for the Applicant in MCA No. 1519/2022/F.

CORAM: M. S. SONAK, J
DATED: 5th January, 2024

ORAL ORDER

1. Heard Mr Agni, learned Counsel for the Applicant (Verner Velho), Mr Pavithran, learned Counsel for the Respondent No. 1 and Mr Noorani, learned Counsel who appears on behalf of Maria Veronica Aliana Dias e Velho @ Veronica Velho, the original Petitioner, in whose name this Civil Revision Application has been filed by her son claiming to be her next friend.

2. Mrs. Veronica Velho has filed Misc. Civil Application No. 1519 of 2022/F urging dismissal of the Civil Revision Application on the ground that neither has she filed the said revision application, nor has she authorised her son to file the same on her behalf.

3. The Civil Revision Application is directed against the detailed Order dated 28.06.2022 made by the Civil Judge, Senior Division, at Panaji (Trial Judge), allowing Veronica Velho's application for unconditional withdrawal of Regular Civil Suit no. 29/2018/B that her son, Verner instituted by claiming she was mentally unsound, and he was her "next friend"

4. Mr. Agni, learned Counsel for Verner, submits that the trial Judge in the roznama recorded on 07.04.2018 had noted that Veronica Velho, during the preliminary inquiry held on the said date, had stated that she was not aware of the contents of the application, which she was required to sign by her Advocate A. P. Furtado. Further Veronica Velho also told the Court that she had come to the Court because the Court called her. Learned trial Judge recorded in the roznama that this was not correct because the Court had never summoned Veronica Velho to the Court. Mr Agni pointed out that based upon this preliminary inquiry, the Court ordered a status quo in respect of the properties which were the subject matter of the suit instituted by Mr Verner Velho, the eldest son of Veronica Velho.

5. Mr Agni submitted that Veronica Velho's statement recorded on 13.12.2019 contradicts her statements made before the Court on 07.04.2018. He submitted that at the earlier stage, the trial Court was *prima facie* satisfied that there was some issue regarding Veronica Velho's sanity and, therefore, a status quo was granted to protect the properties belonging to Veronica Velho. In the impugned Order, however, the trial Court had changed its opinion and permitted Veronica Velho to withdraw the suit notwithstanding the two contradictory statements. Mr. Agni submits that there is a jurisdictional error affecting the impugned Order and, in any case, the impugned Order is vitiated by material irregularity.

6. Mr. Agni submitted that there were instances where Veronica Velho had granted Power of Attorney to her son Vikram (Respondent no.1) and then revoked the same. He pointed out that later on, such Power of Attorney was re-issued. He pointed out that from the date of the impugned Order, almost eighteen properties of Veronica Velho have been sold based upon the Power of Attorney given to Respondent no.1. He submits that all these instances speak volumes about Veronica Velho's mental condition. Without prejudice, he submits that at least a detailed inquiry involving medical professionals was necessary before concluding that she was sound and capable of managing her interests and properties.

7. Mr. Agni also referred to a compilation of medical records concerning Veronica Velho. He submitted that based on the same as well, an inference of Veronica Velho's mental condition should have been drawn. Mr Agni also referred to the medical certificates issued by two Consultant Psychiatrists that were relied upon by Veronica Velho or, rather, some of the Respondents themselves. He pointed out that even these certificates suggest that her mental condition was not sound.

8. Mr. Agni submitted that the Petitioner had already applied for a detailed inquiry regards Veronica Velho's mental condition. He submitted that that application should have been considered before the application at Exhibit D-9 seeking withdrawal of the suit could have been taken up for consideration.

9. For all the above reasons, he submitted that the impugned Order dated 28.06.2022 permitting the unconditional withdrawal of Regular Civil Suit no. 29 of 2018/W warrants interference.

10. Mr. Pavithran, the learned Counsel for the first Respondent, defends the impugned Order based upon the reasoning reflected therein. Besides, he submits that the Civil Revision Application was not maintainable.

11. Mr Noorani, learned Counsel, submits that at least after the trial Court recorded a finding that Veronica Velho was sane or not mentally unsound, the Petitioner had no justification for instituting this Revision Application in Veronica Velho's name and by posing himself as her next friend. He, therefore, submits that Veronica Velho's Misc. Civil Application No. 1519/2022(F) should be allowed, and this Revision Application should be dismissed as withdrawn. Even otherwise, Mr Noorani submits that there is no jurisdictional error or any error whatsoever in the view taken by the learned Trial Judge in the impugned Order to warrant any interference, assuming that a Civil Revision Application was maintainable. He submitted that the very institution of this revision was an abuse of the judicial process. Mr. Pavithran and Mr. Noorani, therefore, submitted that the Civil Revision Application may be dismissed and, in any case, Misc. Civil Application No. 1519 of 2022(F) may be allowed.

12. The rival contentions now fall for determination.

13. This is a case where Regular Civil Suit no.29/2018/B was instituted in the name of Veronica Velho by her eldest son, Verner Velho, claiming to be her 'next friend'.

14. The justification offered by Verner for instituting such a suit was that Veronica Velho was mentally unsound and, therefore,

unable to protect her own interests and properties. Mr. Agni clarified that though Verner Velho had instituted the suit, it was made clear that the Court, upon inquiry, could appoint any other person or son as her next friend in the interest of justice.

15. The roznama of 07.04.2018, based upon which Mr. Agni contended that Veronica Velho should be recorded as mentally unsound or at least *prima facie* mentally unsound, reads as follows :

“Exhibits : D/7 Wakalatnama filed. op file, D/8 Wakalatnama filed. op file. D/9 Appln filed for withdrawal of the suit. op file. appear in the matter today as the suit was filed by her next friend. She further said that she has never filed any suit. In the present scenario this Court is constrained to pass the following order. In the interest of justice and fair play it is ordered that all the parties to the suit to maintain status quo in respect of the subject matter of the present suit. Matter adj for reply and args at EXh D/9 at 10.00 a.m.

Adv G. Agni present for the Plaintiff. Adv A. D. Bhobe present for the Def no.1 and 2. Adv A. P. Furtado present on behalf of plaintiff Mrs Maria Veronica Alina Dias e velho. In this suit there are 2 Advocates present on behalf of plaintiff, one on behalf of plaintiff herself and the other being on behalf of plaintiffs next friend. That in order to solve this situation, this Court thought it proper to have a preliminary inquiry with the plaintiff as she being herself present in the Open Court. Upon being asked whether she has signed this application i.e. Appln for withdrawal of the suit filed by Adv A. P. Furtado, she said that she was asked to sign

the same by her Advocate: However she is not aware of the contents of the said application. She also pointed out to the lawyer who had asked to sign the said application. On further enquiry, she said that she is present in Court as the Court has called her which is not the correct fact as she was never summoned by this Court to.

Next Purpose :Reply/Arg on Exbt.

Next Hearing Date : 19-04-2018

Ad-hoc Civil Judge Senior Division and JMFC, B Court, Panaji”

16. On 07.04.2018 itself, Veronica Velho filed the application at exhibit D-9 seeking leave to withdraw the Civil Suit instituted by Verner, posing as her next friend. Verner, at some later stage, also filed applications seeking a medical investigation into the mental condition of Veronica Velho. Mr. Agni pointed out that an application was made for the appointment of any suitable person as guardian/next friend of Veronica Velho. He submitted that such applications should have been considered before the application at exhibit D-9 seeking withdrawal of the suit could be considered.

17. Regarding the submission that Petitioner's applications seeking medical investigations or for appointment of a suitable guardian/next friend should have been taken up earlier, reference is necessary to the Order made by coordinate bench of this Court comprising A. K. Menon, J. on 21.03.2022 in Writ Petition no. 89 of 2022. This Petition was instituted by Veronica Velho complaining that her

application at exhibit D-9 for withdrawal of the suit was being unreasonably delayed. Veronica Velho sought direction for the expeditious disposal of her application at exhibit D-9.

18. The coordinate bench of this Court, after hearing the parties, including Mr. Agni on behalf of Verner Velho, directed that exhibit D-9 should be disposed of at the earliest. At least this Order dated 21.03.2022 does not record any submissions on behalf of Verner Velho that the application seeking medical investigations or the application for appointment of a guardian be considered before the application at exhibit D-9 could be taken up for consideration. Instead, in paragraph 2 of this Court's Order dated 21.03.2022, it is recorded thus :

“2. Exhibit D-9 is now listed for hearing on 01.04.2022. **All the parties today agree that the trial Court can now proceed to hear and dispose of the Application at Exhibit D/9.** All the Counsel appearing on behalf of respective parties agree that none of the parties will seek any adjournment before the trial Court. In view thereof, there is no need to interfere in this Petition.”

19. From the above, it is clear that all the parties, which include Verner Velho, agreed that the trial Court could proceed to hear and dispose of the application at exhibit D-9. Verner never challenged the above order dated 21.03.2022. Be that as it may, this is not a case

where the Trial judge has allowed exhibit D-9 without an enquiry into Veronica Velho's mental condition.

20. The trial Judge recorded a detailed statement of Veronica Velho on 13.12.2019. This statement was recorded in the presence of the Advocate for Veronica Velho, the Advocate for Verner Velho, who claims to be the next friend of his mother, Veronica Velho, and the Advocate/s for Defendant nos. 1 to 4 in the suit.

21. The detailed statement recorded on 13.12.2019 deserves to be transcribed below for the convenience of reference :

“ RCS no.29/2018/B
AW1
Exhibit C-21

IN THE COURT OF CIVIL JUDGE SENIOR DIVISION,
AT PANAJI

Exh. No. 21

Statement of witness no. AW1

I do hereby on Solemn affirmation state that ...

My Name is : Mrs. Maria Veronica Aliana Dias e Velho
Husband name : Mr. Virgilio Velho
Age : 74 years
Occupation : Housewife
Resident : Panjim

STATEMENT

I say that my eldest Son Verner had filed the present suit without my permission. I say that I received letter from Verner stating that case has been filed against my husband and other sons and my brother in law and sister in law.

I say that I only have kidney problem and medication on kidney problem and besides that I do not have any health issue. I say that I am in sane condition and I understand and I can handle my own affairs.

I say that have filed application of withdrawal of the present suit out of my own free will without any coercion, threat or undue influence from any other person.

I do not wish to claim any reliefs against any of the defendants to the present suit.

I say that Vitorio Velho is my second son and I also do not have any reliefs to be claimed from him in the present suit. I say that the prayer (a) of the suit that I am I incapable by reason of mantle informative from protecting my interest is definitely wrong, as I can protect my interest and I don't need them at all from protecting my interest.

I say that I have a husband and I don't think that I need any guardian for protecting my interest.

I say that I have given my power of attorney to my third son Vikram Velho which I have cancelled out of my own free will.

I say that the specific power of attorney dated 21.8.2014 registered before notary Subhash Sawant under registration no 4042/14 dated 21.8.2014 have been signed by me alongwith my photograph and the other photograph is of my son Vitorio.

I say that I had executed the said power of attorney without any coercion, threats and it was out of my own free will.

I say that the general power of attorney was executed by me and my husband in favour of Vikram Fernando @ Velho

registered under no. 1251/17 dated 4.4.2017 was executed by me without any coercion, threats and it was out of my own free will.

I say that the general power of attorney was executed by me and my husband in favour of Vikram Fernando @ Velho registered under no: 558/18 dated 9.2.2018 was executed by me without any coercion, threats and it was out of my own free will.

I say that I did not ask for any accounts from defendant no. 1 and 2 of the transactions entered into from the year 2013 till date as I am satisfied with those account and I have never asked for the same. I say that I did not ask for any 50% of the share of all my transactions of the year 2013 upto date and I have not filed for any such relief any suit.

I say that I know to read English and I understand the English language and I also know to know English language.

I say that after reading paragraph 54 of the plaint I had not asked for any of the reliefs from para no. (a) to (p).

I say that I do not want to proceed ahead with the present suit filed against my husband, sons, brother in law and sister in law as why should I charge them for the present suit.

I remember I had come once last year to the Court. I say that on 7.4.2018, I wanted to say that the present suit copy was not shown to me and when Judge asked me about the said case on 7.4.2018, had nothing to say, as case papers were not read by me.

I say that last year application for withdrawal at exhibit D-9 was not shown to me by the court.

I say that before signing the application at exhibit D-9, I must have read it. Now, I say that I have read it and signature on the application was done by me.

I say that I have signed the said affidavit in support of my affidavit at exhibit D-9 before the Superintendent of the court.

I say that I do not want to proceed with the proceedings of the case any more.

'Court observation:

It is observed that the witness has not shaken a bit and found fit by the court based on the questions to which the witness answered and recorded in the present statement in the open court.

This statement is recorded in my presence in the presence of witness, in the presence of Advocate for the next friend, Advocate for the witness/main applicant, Advocate for defendant no. 1 and 2 and in presence of defendant no. 3 and 4.

ROAFC
Panaji:
Date : 13.12.2019

Before me
sd/-
Ad-hoc SCJ
'B' Court, Panaji

sd/-
Advocate for main plaintiffs
sd/-
Advocate for next friend of the plaintiffs
sd/-
Advocate for defendant nos. 1 and 2
sd/-
Defendant no.3.
sd/-
Defendant no.4.”

22. The Trial Judge, based upon the detailed statement recorded on 13.12.2019 and the other material on record, including Veronica's demeanour, allowed the application at exhibit D-9. The Trial Judge has recorded findings that there were no circumstances to infer that Veronica Velho was mentally unsound as alleged by Verner Velho. It is not as if the trial Judge has ignored what was recorded in the roznama of 07.04.2018 or what was certified by Dr. Charles Ajoy Estibeiro and Dr. Brahmanand Cuncoliencar. Upon due consideration of all the material on record and holding this preliminary inquiry, the Trial Judge allowed the application at exhibit D-9. There is no jurisdictional error warranting interference with the well-reasoned order that was made after considering all the materials on the record and hearing all the parties.

23. There is no contradiction as such between the statements recorded in the roznama on 07.04.2018 and the detailed statement recorded in the Court on 13.12.2019. Veronica Velho is a 75-year-old lady. As such, some amount of confusion is not at all unnatural. Based upon her responses to questions like she does not know what was stated in the application filed by her or that she had come to the Court because the Court called her, cannot be grounds to condemn Veronica as insane mentally unsound. The statement dated 13.12.2019, which was recorded formally and in the presence of all the Advocates, inspires confidence. Based upon the same, the Trial

Judge was justified in concluding that Veronica Velho was not shaken even a bit while answering the questions posed to her in the open Court. No case is, therefore, made out to interfere with the impugned Order.

24. Mr. Agni did point out the compilation of medical records furnished along with this Revision Application. Still, he fairly agreed that there was no specific certificate of any Doctor commenting upon Veronica Velho's mental state. However, he submitted that the medical certificate issued by the two consultant psychiatrists produced by the Respondents established that Veronica Velho was not mentally sound.

25. The Trial Judge has referred to the certificate of two consultant psychiatrists namely Dr. Charlie Ajoy Estebeiro and Mr. Brahmanand Cuncoliencar. In paragraph 17 of the impugned Order, the Trial Judge has noted that these two consultants psychiatrists have certified that they have examined Veronica Velho and have clearly opined that *she is independent in activities of daily living, mentally aware of her best interests, and mentally capable of identifying, nominating and appointing an attorney to secure her best interests.* The consulting psychiatrists, in the said certificate, have also remarked that Veronica Velho had limitations in expressive verbal language, delayed recall, mathematical operations, detailed analysis

and complex problem solving and that she has moderate Social Anxiety Disorder.

26. Based on the later remarks in the certificate, it cannot be said that Veronica Velho was mentally unsound or otherwise incapable of understanding her own interests or managing her own properties. The certificate of the consultant psychiatrists is absolutely balanced, and based upon the same, no inference of mental unsoundness can be drawn. The Trial Judge was justified in not drawing any inference, particularly when the two consultant psychiatrists had certified that Veronica Velho was mentally aware of her best interest and was mentally capable of identifying, nominating, and appointing an attorney to secure her best interests.

27. This does appear to be a case where the Velho children are engaged in a proxy fight. Verner, perhaps hurt by what he perceives as his mother's partial treatment towards the other children, went to the extent of instituting a suit in his mother's name, claiming she was mentally unsound and incapable of managing her properties. The mother and the other children protested and produced material before the court to contradict Verner's claim. The Trial Court, upon due and proper enquiry, concluded that Veronica Velho was not mentally unsound or incapable of handling her interests and properties. Therefore, Veronica Velho cannot be forced to fight

against the defendants in the suit against her will. There is no error in the conclusion drawn or the approach adopted to call for any interference.

28. There is merit in Mr. Pavithran's contention that this Revision Application was misconceived because the proviso to Section 115 of the Code of Civil Procedure Code provides that the High Court shall not under this Section vary or reverse any order made or any order deciding an issue in the course of a suit or other proceedings, except where the Order if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings. However, this revision is not being dismissed on the ground of maintainability because even if leave was granted to the Petitioner to convert this Petition under Article 227 of the Constitution on merits, no case is made out to interfere with the order made by the trial Judge.

29. For all these reasons, this revision application is dismissed.

30. As a consequence of the dismissal of the Revision Application, there is no necessity to decide upon Misc. Civil Application No. 1519/2022(F), which, in any case, had sought for withdrawal of the Revision Application filed in the name of Veronica Velho. Accordingly, even the said Misc. Civil Application is disposed of.

31. Accordingly, Civil Revision Application No. 1 of 2024 is dismissed, and MCA no. 1519/2022/(F) and MCA No. 1480/2022(F) are disposed of. There shall be no order as to costs.

32. As noted above, this was a dispute between family members. Allegations that should have been avoided were made. The privacy rights of the parties, particularly Veronica Velho's, need some protection. Therefore, no leave is granted to report or publish this order in legal journals or newspapers. Since inventory proceedings are reported to have been instituted, the parties must consider exploring the possibility of settling disputes through mediation or other ADR modes.

M. S. SONAK, J

ANDREZA PEREIRA  Digitally signed by ANDREZA PEREIRA
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