

**IN THE HIGH COURT OF BOMBAY AT GOA**

**WRIT PETITION NO. 119 OF 2015**

1. Mrs. Mahadevi Mahadev Palekar,  
daughter of late Shri Appayappa  
Mahantappa Mahanshetty and wife of  
Shri Mahadev Balappa Palekar,  
major in age, married, housewife,
2. Shri Mahadev Balappa Palekar,  
son of Shri Balappa Mahadappa Palekar,  
major in age, married, retired,  
both r/o. Flat no. G. F. - A-1.  
Madkaikar Plaza,  
Opposite Corlim Petrol Pump,  
Corlim, Tiswadi, Goa,  
For self and as constituted attorney  
for the petitioner no. 1. .... Petitioners

***V e r s u s***

1. Mrs. Lucia D' Silva,  
alias Mrs. Lucy D' Silva,  
widow of late Mr. Joseph Reggie D' Silva,  
major in age,  
r/o Madel, Chorao,  
Tiswadi-Goa.
2. Mr. Hedwig D' Silva  
son of late Mr. Joseph Reggie D' Silva,  
major in age,  
r/o Madel Chorao,  
Tiswadi-Goa.

Presently resident of  
Post Box No. 1515,  
Dubai International Airport,  
Baggage service,  
S.S. 21215246,  
Dubai, United Arab Emirates.

3. Mr. Hyson D' Silva,  
son of late Mr. Joseph Reggie D' Silva,  
major in age,  
r/o./ Madel, Chorao,  
Tiswadi, Goa.  
Presently resident of

Dubai, United Arab Emirates. .... Respondents

Mr. John A. Lobo, Advocate for the Petitioners.

Mr. J. J. Mulgaonkar, Advocate for the Respondents.

**Coram :- F. M. REIS, J**

**Date : 10<sup>th</sup> June, 2015.**

**ORAL JUDGMENT**

Heard Shri John A. Lobo, learned Counsel appearing for the Petitioners and Shri J. P. Mulgaonkar, learned Counsel appearing for the Respondents.

2. I have extensively heard the learned Counsel appearing for the respective parties. The grievances of Mr. Lobo, learned Counsel appearing for the Petitioners are two fold; one that after the application for condonation of delay was granted by the learned Judge, no opportunity was given to the Petitioners to oppose the application for setting aside the exparte Decree and the other is that though the records reveal that there was utmost negligence of the earlier Advocate appearing on behalf of the Petitioners, nevertheless, a meagre sum of Rs.2,000/- has been awarded as cost though the Petitioners have suffered financial loss as after the Decree was passed and the Petitioners had also approached the Court for executing the Decree.

3. Upon hearing the learned Counsel and considering the impugned Order ultimately sets aside the exparte Decree passed by the learned Judge after condoning the delay, I find that no case is made out for any interference in the

impugned Order as such Order is passed in the interest of justice and to enable the parties to decide the dispute on merits. But, however, Shri John Lobo, learned Counsel, may be justified to contend that the cost awarded by the learned Judge ought to have been on the higher side.

4. Taking note of the submissions of Shri J. Mulgaonkar, learned Counsel appearing for the Respondents, I find it appropriate to direct the Respondents to pay a further sum of Rs.5,000/- as costs as condition precedent for setting aside the exparte Decree.

5. Rule stands disposed of in the above terms. Petition stands accordingly disposed of.

**F .M. REIS, J.**

arp/\*