

IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO. 385 OF 2015.

Smt. Sharma B. V. Coutinho,
Wife of Arvind Chopdekar,
Major in age, H.No.700,
Biunca, Cuncolim, Salcete, Goa. Petitioner.

Versus

1. Mr. Andre Lourenco Fernandes,
Son of Guilherme Fernandes,
Aged 70 years, and resident
Of H.No.2187, Comba, Paricotto,
Cuncolim, Salcete, Goa.
2. Mr. Aniceto Fernandes,
Son of Salvador Gabriel Fernandes,
Aged 62 years, seaman and
R/o H.No.2779, Comba,
Paricotto, Cuncolim, Salcete, Goa.
3. Mrs. Maxima Fernandes,
Wife of Francisco Fernandes,
Aged 64 years, housewife,
R/o H. No. 2779, Comba,
4. Mr. Gabino Salvador Fernandes,
Son of Sebastiao Valente Fernandes,
Aged 62 years, retired, seaman,
R/o H.No. 2526, Comba,
Paricotto, Cuncolim, Salcete, Goa.
5. Mr. Agnelo Camilo Fernandes,
Son of Francisco Cirilo Fernandes,
Aged 40 years, R/o H.No. 866,
Comba, Paricotto, Cuncolim, Salcete, Goa.
6. Mr. Sucorro Sabino Fernandes,
Son of Piedade Ambrosio Fernandes,
Aged 59 years, R/o H.No. 2251,
Comba, Paricotto, Cuncolim, Salcete, Goa.
- 6.(a) Smt. Savita Merecia Fernandes,
Wife of late Sucorro Sabino Fernandes,
Aged 46 years, housewife,
- 6.(b) Shri Panny Fernandes,

Son of Sucorro Sabino Fernandes,
Aged 27 years, seaman,
Both R/o H.No. 2251, Comba,
Paricotto, Cuncolim, Salcete, Goa.

- 6.(c) Smt. Susan Fernandes,
Daughter of late Sucorro Sabino
Fernandes, aged 26 years,
Teacher and her husband,
- 6(d) Shri Fawil Fernandes,
Aged 29 years, seaman,
Both residents of H.No.108,
Ranghavi Estate, Bogmallo
Road, Alto Dabolim,
Mormugao, Goa.
7. Mrs. Sandra Fernandes,
Wife of Mr. Filandro Fernandes,
Aged 41 years, service and resident
Of H.No.1339, Comba, Paricotto,
Cuncolim, Salcete, Goa.
8. Mr. Salazar Nemerciano Fernandes,
Son of Antonio Jose Fernandes,
Aged 62 years, service and resident
Of H.No.2196, Comba, Paricotto,
Cuncolim, Salcete, Goa.
9. Mr. Anthony Melchiades Monteiro,
Son of Santiago Monteiro,
Aged 43 years and R/o
H.No.2194, Comba, Paricotto,
Cuncolim, Salcete, Goa.
10. Ms. Clency Clary Pinto e Fernandes
Alias Clency Fernandes, daughter of
Thomas Santana Romano Pinto,
Wife of Cliff Fernandes, aged about 30
Years and resident Of H.No.3/196/2,
Comba, Paricotto,
Cuncolim, Salcete, Goa.
11. Shri Wilson Xavier Vaz,
Son of Caetano Francisco Vaz,
Aged 56 years, R/o H.No.2164,
Comba, Paricotto,
Cuncolim, Salcete, Goa.
The Respondent nos.2 to 11 are

duly represented by their duly
Constituted attorney Mr. Andre Lourenco
Fernandes by virtue of Deed of Power of
Attorney 14/10/2011 executed before
The Notary Ms. T. Xavier at Margao
And registered under No.1002/11.

12. M/S Sociedade Agricola dos Gauncares
De Cuncolim e Veroda, a Corporate
Body constituted under erstwhile
Portuguese law having its registered
Office near the Church of Our Lady of
Health, Cuncolim Salcete, Goa,
Represented by President Shri
Madhukar Dessai.
13. Shri Sandeep B. Dessai,
Son of Babusso S. Dessai,
Age about 43 years, service,
R/o H.No.711, Buimsa,
Cuncolim, Salcete, Goa.
14. Shri Nandakishore V. Dessai,
Son of Shri Vencu X. N. Dessai,
Major in age, service, R/o
H.No.93-C, Comba, Paricotto,
Cuncolim, Salcete, Goa.Respondents.

Mr. Siddesh Shet, Advocate for the petitioner.

Mr. Balkrishna Sardessai, Advocate for the respondents.

Coram:- K. L. WADANE,J.

Reserved on:18th November, 2015.

Pronounced on :20th November,2015.

JUDGMENT

Heard S. Shet, learned Counsel appearing for the
petitioner and Mr. B. Sardessai, learned Counsel appearing for
the respondents.

2. Rule made returnable forthwith.

3. Heard by consent of learned counsel appearing for the respective parties. Mr. B. Sardesai, learned Advocate waives notice on behalf of the respondents.

4. By this petition the original defendant no. 4 has challenged the order passed by the learned Additional Senior Civil Judge(Ad-hoc), Margao below Exh. 41 dated 4.12.2014 by which the application for condonation of delay is dismissed.

5. Brief facts of the case may be stated as follows:-

The suit for the declaration was filed by the respondent nos. 1 to 11 against the present petitioner and respondent nos. 12 to 14. Summons were duly served upon the petitioner. The petitioner appeared on 17.7.2012 and matter was fixed for filing Written Statement on 2.8.2012. However, the defendant no.4/present petitioner failed to remain present. Subsequently matter was fixed on 30.8.2012. At that time also the present petitioner fail to remain present. It was noted that though the present petitioner was duly served she remained absent and no written statement was filed. At the first appearance, the petitioner put up her appearance on 10.10.2013 through her lawyer, even on that day the petitioner did not seek time to file written statement nor she filed written

statement. Thereafter no written statement was filed by the petitioner for about five months and subsequently written statement came to be filed for the first time on 12.3.2014 alongwith application for condonation of delay and for setting aside exparte order.

6. According to the petitioner there was five months and odd days delay caused for filing written statement which is sought to be condoned.

7. I have heard arguments of Mr. S. Shet, learned Counsel appearing for the petitioner and Mr. B. Sardessai, learned counsel appearing for the respondents.

8. I have gone through the records of the trial Court from which it is seen that inspite of service of the summons the petitioner had not taken steps to file written statement within a stipulated period as required under Order VIII Rule 1 of the CPC. The reasons or grounds mentioned by the petitioner for condoning the delay appears to be unreasonable because the grounds set out in the petition for the condonation of delay are that the petitioner was out of Goa and she instructed her friend to appear on her behalf in the proceedings and to engage services of lawyer. Further more, subsequently the petitioner appeared and she fail to seek time to file written statement. So

there was negligence on the part of the petitioner in defending the proceedings. The grounds stated by the petitioner for condoning the delay are not at all reasonable. As per the provisions of Order VIII Rule 1 of CPC, the defendant was to file written statement within a period of 30 days from the date of the service of summons. The Court can extend the period for filing written statement beyond the period of 30 days for the reasons to be recorded in writing. Such period shall not be extended beyond 90 days from the date of service of summons. The language employed in Order VIII Rule 1 of CPC is very much clear, by which it is obligatory on the part of the defendant to submit her written statement at the most within a period of 90 days. Beyond such period the defendant has to establish reasonable grounds for non-filing of such written statement and only on that event defendants are allowed to file written statement but it is in the exceptional cases. Thus, from the reasons recorded by the learned Trial Court, it is very much clear that the learned Trial Court has considered all the aspects and has rightly rejected the application. Hence, there is no substance in the petition and accordingly it is dismissed.

9. Rule stands discharged with no order as to costs.

K. L. WADANE, J.