

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.480 OF 2015**

Shri Shripad Hari Naik,
age 89 years, son of late Hari Naik,
resident of H.No.113, Thivim,
Bardez, Goa.

.... Petitioner

V/s

1. Shri Sarvesh Prabhakar Naik,
son of Prabhakar Naik, of major age,
married, service/business, and his wife.
2. Mrs. Anuja Sarvesh Naik,
of major age, wife of Shri Sarvesh Naik,
in service, housewife.

Both residents of House No.729/5(old)/803(new),
Portawado, Siolim, Bardez, Goa.

3. Ms. Pramila Dos Santos Braganca,
of major age, spinster,
daughter of late Armando
dos Santos Braganca, retired.
4. Mrs. Cintia Coelho,
also known as Cintia Carmelina
Partricio Dos Santos Braganca,
of major age, daughter of Armando
dos Santos Braganca,
widow of Joviniano Philomeno
Angelo Conceicao Coelho, retired.
5. Mr. Aldino Patricio Dos Santos Braganzca,
son of late Armando dos Santos Braganca,
of major age, service.
6. Mr. Agnelo Salvador Patricio
Dos Santos Braganca,

son of late Armando dos Santos Braganca,
of major age, retired, and his wife.

7. Mrs. Maria Silvia Ines Fernandes
Mesquita Alias Silvia Mesquita
Santos Braganca, of major age, retired.
8. Mr. Avertano Alvaro Patricio
Dos Santos Braganca, of major age,
son of late Armando dos Santos Braganza,
All residents of House No.222,
Mazal Vaddo, Assagao, Bardez, Goa. Respondents

Mr. D. Pangam, Advocate for the Petitioner.

Mr. Sudin M.S. Usgaonkar, Senior Advocate with Ms. Vinita Palyekar, Advocate for the Respondents.

CORAM : F.M. REIS, J.

DATE : 17th JULY, 2015

ORAL JUDGMENT :

Heard Mr. D. Pangam, learned Counsel appearing for the petitioner and Mr. Sudin M.S. Usgaonkar, learned Counsel appearing for the respondents.

2. Rule. Heard forthwith with the consent of the learned Counsel.
Learned Counsel appearing for the respondents waives service.

3. I have extensively heard Mr. Pangam, learned Counsel

appearing for the petitioner and Mr. Sudin M.S. Usgonkar, learned Senior Counsel appearing for the respondents.

4. The main grievance of the petitioner is that by the impugned order dated 23/02/2014, the petitioners have been forbidden from filing a written statement.

5. Mr. Sudin Usgaonkar, learned Senior Counsel has strongly opposed the petition on the ground that the petitioners have been taking successive adjournments and seeking time to file written statement on flimsy grounds. Learned Senior Counsel further submits that it is well settled that this exercise of discretion in extending the time to file written statement cannot be exercised lightly.

6. On the other hand, Mr. D. Pangam, the learned Counsel for the petitioner submitted that this Court in a judgment reported in **2009 (1) Goa L.R. 457** in the case of **Mrs. Shalini Nunes Mascarenhas and Ors. V/s. Mr. Trevor Nunes and anr.** has taken a view that provision of Order 8 Rule 1 of Civil Procedure Code are not applicable to filing written statement to counter claims.

7. Taking note of the ratio laid down by this Court, in the judgment in the case of *Mrs. Shalini Nunes Mascarenhas and Ors. V/s. Mr. Trevor Nunes and anr.* (supra), I find that the question of examining whether the requirement of Order 8 Rule 1 are satisfied to file the written statement are not required to the facts of the present case. No doubt, the petitioner had time to file the written statement but failed to do so and this conduct of the petitioner cannot be easily condoned. But, however, considering that on earlier occasions the Court had granted time to the petitioner to file a written statement up to the day when the impugned order was passed, I find that the petitioner should be given a last opportunity to file the written statement to the counter claim subject to payment of costs of Rs.10,000/- as condition precedent.

8. In view of the above, I pass the following order:

ORDER

(i) The impugned order dated 23/02/2014 is quashed and set aside.

(ii) The petitioner is permitted to file written statement subject to payment of costs of Rs.10,000/- as condition precedent.

(iii) Liberty to the respondents to withdraw costs deposited in this Court within three weeks from today.

(iv) Rule is made absolute in the above terms.

F.M. REIS, J.

NH/-