

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 441/2015**

Mr. Jitendra Prasad,
Proprietor of Real Group,
First Floor, above Fr. Agnelo Fabrication,
Next to OPD Health Centre,
near St. Cruz Church, 1st Bairro,
St. Cruz, Ilhas, Goa.

..... Petitioner.

V/s.

1. M/s. Cafe Real Pvt. Ltd.,
A company incorporated under the
Companies Act, 1956, with its
Registered Office at Mascarenhas
Building, 3rd Floor, M.G. Road,
Panaji, Goa 403 001.

2. M/s. Real Drinks Pvt. Ltd.,
A company incorporated under the
Companies Act, 1956, with its
Registered Office at Mascarenhas
Building, 3rd Floor, M.G. Road,
Panaji, Goa 403 001.

3. M/s. Real House Distillery Pvt. Ltd.,
A company incorporated under the
Companies Act, 1956, with its
Registered Office at Mascarenhas
Building, 3rd Floor, M.G. Road,
Panaji, Goa 403 001.

4. Real Food Exporters Pvt. Ltd.,
A company incorporated under the
Companies Act, 1956, with its
Registered Office at Mascarenhas
Building, 3rd Floor, M.G. Road,
Panaji, Goa 403 001.

5. M/s. Real Bottling Factory Pvt. Ltd.,
A company incorporated under the
Companies Act, 1956, with its
Registered Office at Mascarenhas
Building, 3rd Floor, M.G. Road,
Panaji, Goa 403 001.

6. M/s. Agencia Real Trading and
Marketing Pvt. Ltd.,
a company incorporated under the
Companies Act, 1956, with its
Registered Office at Mascarenhas
Building, 3rd Floor, M.G. Road,
Panaji, Goa 403 001.

7. M/s. Agency Real Vasco Pvt. Ltd.,
a company incorporated under the
Companies Act, 1956, with its
Registered Office at Mascarenhas
Building, 3rd Floor, M.G. Road,
Panaji, Goa 403 001.

8. M/s. Agencies Real Canacona Pvt. Ltd.,
a company incorporated under the
Companies Act, 1956, with its
Registered Office at Mascarenhas
Building, 3rd Floor, M.G. Road,
Panaji, Goa 403 001.

9. M/s. Agency Real Margao Pvt. Ltd.,
a company incorporated under the
Companies Act, 1956, with its
Registered Office at Mascarenhas
Building, 3rd Floor, M.G. Road,
Panaji, Goa 403 001.

10. M/s. Agencia Real Ponda Pvt.
A company incorporated under the
Companies Act, 1956, with its
Registered Office at Mascarenhas
Building, 3rd Floor, M.G. Road,
Panaji, Goa 403 001.

11. M/s. Agencia Real Construction Pvt. Ltd.,
a company incorporated under the
Companies Act, 1956, with its
Registered Office at Mascarenhas
Building, 3rd Floor, M.G. Road,
Panaji, Goa 403 001.

12. M/s. Agencia Mapusa Pvt. Ltd.,
a company incorporated under the
Companies Act, 1956, with its
Registered Office at Mascarenhas
Building, 3rd Floor, M.G. Road,
Panaji, Goa 403 001.

13. M/s. Real Soda Pvt. Ltd.,
a company incorporated under the
Companies Act, 1956, with its
Registered Office at Mascarenhas
Building, 3rd Floor, M.G. Road,
Panaji, Goa 403 001.

14. M/s. Agencia Real Sales & Services,
Pvt. Ltd., a company incorporated under the
Companies Act, 1956, with its
Registered Office at Mascarenhas
Building, 3rd Floor, M.G. Road,
Panaji, Goa 403 001.

15. M/s. Real Fintrade Company Pvt. Ltd.,
a Companies Act, 1956, with its
Registered Office at Mascarenhas
Building, 3rd Floor, M.G. Road,
Panaji, Goa 403 001.

All the above respondents are represented
in this suit by their authorized signatory
Nishakant Pednekar, 41 years of age,
Indian National, son of Narsiha Pednekar,
residing at House No.667, St. Anthony
Waddo, Guirim, Bardez, Goa, duly
duly authorised by Board resolution of the
respective Respondents dated 15.2.2012.

..... Respondents.

Mr. S. D. Padiyar, and Mr. P. Arolkar, Advocates for the petitioner.

Mr. J. E. Coelho Pereira, Senior Advocate with Mr. Vinod Korgaonkar, Advocate for the respondents.

CORAM :- F.M. REIS, J.

Date : - 14th August, 2015.

ORAL JUDGMENT :

Heard Mr. S.D. Padiyar, learned Counsel appearing for the petitioner and Mr J. E. Coelho Pereira, learned Senior 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. Upon hearing the learned Counsel appearing for the respective parties, a short point which arises for consideration is, whether, merely because the costs imposed by the learned Adhoc District Judge, Panaji in lieu of the relief of imprisonment, to the tune of Rs.20,000/- was not deposited within the time specified in the order, would itself disentitle the petitioner to make the payment and proceed

to contest the suit?

4. Mr. S. D. Padiyar, learned Counsel appearing for the petitioner has pointed out that after the impugned order dated 29th May, 2015 was passed by the learned Judge, the petitioner filed an application dated 17th June, 2015 to make the payment of Rs.20,000/- without prejudice to his rights to challenge the said order. The application was opposed by the respondents and the learned Judge, ultimately, dismissed such application.

5. Mr. J. E. Coelho Pereira, learned Senior Counsel appearing for the respondents has pointed out that the impugned order passed by the learned Judge dated 29th May, 2015 was self operating as, according to him, the amount of costs of Rs.20,000/- was to be paid on the next date of hearing which was on 10th June, 2015. The learned Senior Counsel has further pointed out that as the costs were not paid on the said date, the consequences would naturally follow and the petitioner is precluded from taking part in the proceedings in the suit. The learned Senior Counsel has further pointed out that the order passed by the learned Judge is within her discretion and, as such, the question of interference by this Court under Article 227 of the

Constitution would not arise. The learned Senior Counsel has also pointed out that there was no application filed by the petitioner for extension of time to comply with the directions in the impugned order.

6. With regard to the contention of Mr. Coelho Pereira, learned Senior Counsel appearing for the respondents that there is no question of interfering with the discretion of the learned Lower Court, in such matters, under Article 227 of the Constitution, I find that the consequences of the order passed by the learned Judge would be harsh and drastic and, in such circumstances, when the impugned order would entail failure of justice to the petitioner, it is always open for this Court to interfere under Article 227 of the Constitution. In the present case, by not permitting the petitioner to purge the contempt on payment of the sum of Rs.20,000/-, the consequences would be very harsh to the petitioner which would result in the petitioner being precluded from contesting the suit. In such circumstances, the said contention of the learned Senior Counsel appearing for the respondents, in the facts of the present case, cannot be accepted.

7. With regard to the remaining contentions of the learned Senior Counsel appearing for the respondents, I find that even in case there is any delay in payment of the amount of costs is mentioned in

the order passed by the learned Judge dated 29th May, 2015, it is always open to the defaulting party to file an application to purge the contempt and show sufficient cause for the default. In the present case, though the application filed by the petitioner may not be happily worded, it can always be examined in the peculiar facts of the case as an application which was filed immediately on the next date of hearing to condone the lapse as the petitioner was contemplating to challenge the order before a superior Court. As the petitioner has shown willingness to pay the amount of Rs.20,000/- to the respondents, I find that the learned Judge was not justified to refuse in accepting the said amount on the subsequent date of hearing i.e. 17th June, 2015. But, however, considering that the petitioner was not diligent enough to take necessary steps in complying with the directions of the Court, I find that a further sum of Rs.5,000/- deserves to be paid to the respondents towards costs. Mr. Coelho Pereira, learned Senior Counsel appearing for the respondents, upon instructions, states that such costs may be directed to be deposited with the Goa State Legal Service Authority.

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

(I) The petitioner shall pay the costs of Rs.20,000/- to the respondents on or before 20th August, 2015.

- (II) The petitioner shall deposit the costs of Rs.5,000/- with the Goa State Legal Service Authority within one week from today.
- (III) The impugned Order dated 17th June, 2015 passed by the learned Adhoc District Judge-1 (FTC), Panaji is, accordingly, quashed and set aside.
- (IV) The Rule is made absolute in the above terms.

F.M. REIS, J.

ssm.