

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 551 OF 2013

Shri Anant S. Bondre,
son of Mr. Shashikanth Bondre,
aged 49 years, Indian National,
resident of A/G 1, Neelgagan,
Apartments, 1st Floor, Arlem,
near old RTO Office, Raia,
Salcete, Goa.

..... Petitioner

V e r s u s

1. Mr. Alfred David Fernandes,
aged 39 years, married,
and his wife,
2. Mrs. Ramsee Fernandes alias
Mrs. Alfred david Fernandes,
major of age,

Both residing at House no. 75,
Gavant (Pethar), Carambolim,
Old-Goa

..... Respondents

Mr. D. J. Pangam, Advocate for the Petitioner.

Mr. J. Godinho, Advocate for the Respondents.

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

Date : **18th June, 2015.**

ORAL JUDGMENT

Heard Shri D. Pangam, learned Counsel appearing for the Petitioner
and Shri Godinho, 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. The above Petition takes exception to Order dated 10.06.2013 whereby an application under Order 16 of the Civil Procedure Code to examine three witnesses came to be dismissed.

4. Shri Pangam, learned Counsel appearing for the Petitioner, has pointed out that the said witnesses are very material for the purpose of supporting the case put forward by the Petitioner and, as such, grave injustice would occasion to the Petitioner in case the impugned Order is allowed to stand. Learned Counsel further pointed out that the witnesses which are being examined are for the purpose of corroborating and/or confirming the authenticity of the documents which are already on record and exhibited and that no fresh documents would be produced by the Petitioners through the said witnesses. Learned Counsel further pointed out that the learned Judge has erroneously come to the conclusion that the Petitioners have not disclosed the purpose for which the witnesses are being examined, when on the contrary, the application itself suggests the reason why the Petitioner desires to examine the said witnesses. Learned Counsel further submits that in case the impugned Order is allowed to stand, the Petitioner would suffer grave injustice and, as such, the impugned Order deserves to be quashed and set aside. Shri Pangam, learned Counsel appearing for the Petitioner, upon instructions of the Petitioner, pointed out that the Petitioner shall not produce any new document through the said three witnesses.

5. On the other hand, Shri J. Godinho, learned Counsel appearing for the Respondents, pointed out that the Petitioner by the present application is

seeking a back door relief to produce additional document through the said witnesses. Learned Counsel has further taken us through the averments in the application at para 4 to point out that there are specific documents referred to therein on which the Petitioner desires to examine the said witnesses. Learned Counsel further pointed out that unless and until the Court has granted necessary permission to produce such documents, the question of examining the witnesses on that count would not arise. Learned Counsel has taken me through the impugned Order and pointed out that the learned Judge has rightly dismissed the application to examine the additional witnesses.

6. I have considered the submissions of the learned Counsel and with their assistance, I have gone through the records. The apprehension of Mr. Godinho that the Petitioner may produce additional documents through the said three witnesses would not survive in view of the statement made by Shri Pangam, on instructions, that no new document would be produced through the said witnesses.

7. In such circumstances, the basic objection raised by the Respondents opposing the application filed by the Petitioner to examine the three witnesses would not subsist. Be that as it may, it cannot be disputed that the application filed by the Petitioner is not appreciably worded. There are no specific averments disclosed why the names of the said witnesses were not filed at the time of filing the list of witnesses. In such circumstances, the delay and prejudice caused to the Respondents has to be compensated by the Petitioner by paying costs to the

Respondents. The costs to be paid to the Respondents by the Petitioner is quantified as Rs.2,500/-.

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

ORDER

(1) The impugned Order dated 10.06.2013 is quashed and set aside.

(2) The Petitioner is permitted to examine the said three witnesses as referred to at para 3 of the said application.

(3) Needless to say, that in view of the statement of Shri Pangam, learned Counsel appearing for the Petitioner no fresh documents shall be produced through the said three witnesses.

(4) Leave is granted subject to the said statement of the learned Counsel of the Petitioner.

(5) The Petitioner to pay costs of Rs.2,500/- to the Respondents as condition precedent.

(6) Rule made absolute in the above terms.

(7) Petition stands disposed of accordingly.

F .M. REIS, J.

arp/*