

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 751/2014**

1) Anand V. Angdi,
about 48 years of age,
son of Vishnu Angdi,
occupation business,
residing near Joazinho Fernandes Bar,
Veroda, Cuncolim, Salcete, Goa.

2) Maqbool Ahmed,
about 50 years of age,
son of Shaikh Ahmed,
occupation business,
residing near Joazinho Fernandes Bar,
Veroda, Cuncolim, Salcete, Goa.

3) Sarpulo Narayan Desai,
major, son of Narayan Dessai,
resident of Biunsa,
Cuncolim, Salcete, Goa.

..... Petitioners.

V/s.

1) Miss Beraldin Tavares,
daughter of late Egidio Tavares, (expired)
since deceased, through LRs.

1(a) Smt. Silvina Carvalho
(sister of the deceased)
aged 74 years, housewife,
residing at ³/₄, Ramwadi,
Haryali Village,
Vikhroli (E), Mumbai 400 083.

1(b) Menino Carvalho,
son of Silvina Carvalho,
aged 46 years, occupation service,
residence of Classic Enclave
C-7, 1st floor, Bhor Bhat,
beside Martin Coop. Society,

Taleigao, Panaji, Goa.

1(c) Antonette Carvalho,
w/o. Menino Carvalho,
aged 43 years, housewife,
r/o. Classic Enclave, C-7, 1st Floor,
Bhor Bhat, beside Martin Coop. Society,
Taleigao, Panaji, Goa.

1(d) Melwyn Carvalho,
s/o. Silvina Carvalho, aged 42 years,
service, residing at $\frac{3}{4}$, Ramwadi,
Haryali Village, Vikhroli (E),
Mumbai 400 083.

1(e) Genevieve Carvalho,
w/o Melwyn Carvalho, aged 42 years,
housewife, residing at $\frac{3}{4}$, Ramwadi,
Haryali Village, Vikhroli (E),
Mumbai 400 083.

1(f) Maggie Carvalho (also guardian for
f(i) and (ii), daughter-in-law
of said Silvina Carvalho,
w/o. Marcus Carvalho, aged 45 years,
occupation service, residing at $\frac{3}{4}$, Ramwadi,
Haryali Village, Vikhroli (E),
Mumbai 400 083.

1(f)A) Maxwilkl Carvalho (minor),
B) Allen Carvalho (minor),

Both residing at $\frac{3}{4}$, Ramwadi,
Haryali Village, Vikhroli (E),
Mumbai 400 083.

1(g) Agileu Jenovico Jose Tavares,
major, borthor of Beraldin Tavares,
resident of Savorcotto,
Cuncolim, Salcete, Goa.

1(h) Menino Tavares, major, brother of

Beraldin Tavares,
resident of Savorcotto,
Cuncoim, Salcete, Goa.

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Respondents.

Mr. Rohit Bras de Sa, Advocate for the petitioners.

None for the respondents, though served.

CORAM :- F.M. REIS, J.

Date : - 14th August, 2015.

ORAL JUDGMENT :

Heard Mr. Rohit Bras de Sa, learned Counsel appearing for the petitioners. None for the respondents, though served.

2. Rule. Heard forthwith.

3. The above petition challenges an order passed by the learned Civil Judge, Jr. Division, at Margao, dated 7th April, 2014 whereby an application filed by the petitioners for adjournment, as the witness DW.3 could not be present, came to be dismissed and the learned Judge closed the cross examination of DW.3, as well as further evidence of the petitioners.

4. Mr. Rohit Bras de Sa, learned Counsel appearing for the petitioners has pointed out that on the relevant date the witness DW. 3 could not remain present on account of health reasons. The learned Counsel further pointed out that the records reveal that there was no opposition to such an application by the respondents. The learned Counsel, however, points out that the learned Judge by the impugned order dated 7th April, 2015 rejected the said application on an erroneous ground that the petitioners availed off 29 adjournments which is patently incorrect. The learned Counsel further points out that the record and proceedings itself would suggest that the petitioners have not sought for such adjournments, but, on a number of occasions the matter was adjourned as the learned Judge was not present and on some occasions, the witnesses of the other defendants in the suit were being examined. The learned Counsel has, thereafter, taken me through the record and proceedings to point out that on 12th March, 2014 the matter was fixed for the evidence of the petitioners on 15th March, 2014. The learned Counsel further submits that on the same day, i.e. 12/03/2014, the learned Advocate appearing for the petitioners had sought for change of the date, which came to be rejected by the learned Judge in view of the absence of the Advocate appearing for the

opposite side. The learned Counsel further points out that the matter was, thereafter, adjourned on 15th March, 2014 and was fixed on 20th March, 2014 at the requests of the petitioners. The learned Counsel, thereafter, has pointed out that on the said date, the Advocate appearing for the respondents/plaintiffs pointed out that a copy of the affidavit-in evidence was furnished to him only one day before the said date and accordingly, the matter came to be adjourned. The learned Counsel further pointed out that on the subsequent date i.e. 7th April, 2014, the impugned order was passed, closing the evidence of the petitioners. The learned Counsel, as such, submits that the impugned order passed by the learned Judge is on erroneous considerations as, according to him, the petitioners had not availed of three adjournments.

5. The respondents, though served, have failed to remain present.

6. On perusal of the records, I find that the finding of the learned Judge in the impugned Order dated 7th April, 2014 to the effect that the petitioners have sought 29 adjournments does not appear to be correct. The records do not support the said observations of the learned Judge. But, however, the records reveal that on the previous date of

hearing, the matter was adjourned as the learned Advocate appearing for the respondents/plaintiffs had pointed out to the Court that he could not proceed with the matter as he was furnished a copy of the affidavit-in-evidence only on the previous day. Immediately, on the subsequent date, though the petitioners sought for an adjournment on medical ground, the learned Judge passed the impugned order, closing the evidence of the petitioners. The learned Counsel has pointed out that grave prejudice would occasion to the petitioners in case the impugned order is not quashed and set aside.

7. Considering the peculiar facts of the case, I find that the learned Judge was not justified to close the evidence of the petitioners on 7th April, 2014 on the ground that the petitioners had already availed off more than three adjournments. As already pointed out hereinabove, the records reveal otherwise. But, however, considering that the suit was already posted for defence evidence and the matter was fixed on priority basis by the learned Judge, the petitioners should be directed to pay costs to the respondents/plaintiffs as condition precedent. The costs are quantified at Rs.10,000/-.

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

O R D E R

(I) The impugned order dated 7th April, 2014, passed by the learned Civil Judge, Jr. Division, at Margao in Regular Civil Suit No. 179/2004/E, closing the evidence of the petitioners/defendants is quashed and set aside, subject to payment of costs of Rs.10,000/- as condition precedent to the respondent/plaintiffs.

(II) The petitioners/defendants shall proceed to examine DW.3 and other witnesses, in accordance with law.

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

F.M. REIS, J.

ssm.