

**IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 795 OF 2014**

Mr. Jivan Gajanan Naik,
S/o. Gajanan Naik,
Major of age, married, business,
r/o. Fatta waddo, Nerul,
Bardez, Goa.

... Petitioner

Versus

1. Mrs. Prafulla Prakash Kandolkar,
W/o. late Prakash Deu Kandolkar,
58 years of age, widow, housewife,
r/o. H.No.480, Nerul, Bardez, Goa.
2. Mr. Suraj Prakash Kandolkar,
S/o. late Prakash Deu Kandolkar,
29 years of age, married, business,
r/o. H.No.480, Nerul, Bardez, Goa.
3. Mrs. Ujwala Suraj Kandolkar,
W/o. Suraj P. Kandolkar,
25 years of age, married, housewife,
r/o. H.No.480, Nerul, Bardez, Goa.
4. Kiran Prakash Kandolkar,
S/o. late Prakash D. Kandolkar,
27 years of age, unmarried, business,

r/o. H.No.480, Nerul, Bardez, Goa.

5. Mr. Abhai Gaja Naik,
S/o. Gaja Naik, Major of age,
married, business, r/o. Fatta waddo,
Nerul, Bardez, Goa. ... Respondents

Mr. Vivek Angelo Rodrigues, Advocate for the Petitioner.

Mr. Atmaram Dessai, Advocate for Respondents No.1 to 4.

Coram:- N. M. JAMDAR, J.

Date:- 4 March 2015

ORAL JUDGMENT :

The learned Counsel for the petitioner seeks leave to delete respondent no.5. Respondent no.5 is permitted to be deleted at the risk of the petitioner.

2. Rule. Rule made returnable forthwith. Respondents waive service.

3. The petitioner challenges the order passed by the learned Civil Judge, Junior Division, Mapusa dated 16 October 2014, striking of the defence of the petitioner.

4. The respondent-landlord has filed a suit for eviction of the petitioner and for mesne profits. An application was filed by the respondents-plaintiffs under Order 15-A of the Civil Procedure Code. By order dated 2 May 2014, the petitioner

was directed to deposit an amount of Rs.7,500/- and was further directed to deposit the licence fees of Rs.5,000/- from 1 July 2012 till final determination. This order was not challenged by the petitioner neither any deposit was made. Thereafter, an application was made again by the respondents to strike of the defence, on the ground that the petitioner had not complying with the order dated 2 May 2014. In this application, the learned Civil Judge has struck of the defence of the petitioner.

5. I have heard the learned Counsel for the parties. Though the learned Civil Judge was justified in showing his displeasure in view of the conduct of the petitioner, Mr. V. Rodrigues, the learned Counsel for the petitioner has tendered an apology on behalf of the petitioner and has sought to give explanation as regard the non-payment. Mr. Rodrigues submitted that the petitioner will not repeat this conduct and an opportunity be given and the petitioner to put to conditions including the imposition of costs. Mr. A. Dessai, the learned Counsel for the respondents-plaintiffs too states that cost may be imposed.

6. In view of this stand, I am of the opinion that an opportunity be given to the petitioner who is occupying the premises since last almost 30 years. However, the petitioner needs to be put under conditions. The petitioner has deposited an amount of Rs.17,500/- pursuant to the order passed in this petition on 18 December 2014. Considering the conduct of the petitioner and that the relief is being extended in favour of the

petitioner by way of pure indulgence, it is equitable that the petitioner's deposit Rs.17,500/- as costs within two weeks from today in addition to the amount already deposited. It is also made clear that for any single default in depositing the amount of fees, the impugned order shall stand revived without further reference to the Court. Mr. V. Rodrigues states that the petitioner will abide by these conditions.

7. In the circumstances, petition is disposed of by quashing and setting aside the impugned order dated 16 October 2014, on the condition that the petitioner deposits additional amount of Rs.17,500/- towards costs within a period of two weeks. The respondents will be entitled to withdraw both these amounts deposited. It is made clear for any default in payment of fees henceforth, the impugned order dated 16 October 2014 shall stand revived, without reference to the Court. Writ Petition is accordingly disposed of in above terms.

N. M. JAMDAR, J.

NH/-