

**IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 802 OF 2014**

1. Mr. Ragunath Anant Nagvenkar,
S/o late Anant Pundolik Nagvenkar,
major of age, married,
since deceased through legal heirs
1(b) Mr. Milind Nagvenkar,
all major in age
All resident of
House No. 117,
Naikawaddo, Calangute,
Bardez Goa.

2. Smt. Indumati Raghunath Nagvenkar,
Daughter of late Gangaram Nagvenkar,
Daughter of late Gangaram Manguesh
Pednekar and wife of Shri Raghunath
Anant Nagvenkar, major, married,
Both r/o House No. 117,
Naikawada, Calangute, Bardez Goa. ...Petitioners

V e r s u s

1. Mrs. Faustine Alex Lobo,
widow of late Alex Lobo,
major in age,

2. Mr. Caro Alez Lobo,

Son of late Alex Lobo,
Major, married,

3. Mr. Jose Alex Lobo,
Son of late Alex Lobo,
Major, married,
All residing at House No. 264,
Gaura wado, Calangute,
Bardez Goa.

4. Miss Reena Nagvenkar,
major of age,

5. Mr. Rohan Nagvenkar,
major of age,
resident of H.No.117,
Naikawaddo,
Calangute, Bardez Goa.

...Respondents

Mr. Vivek Angelo Rodrigues, Advocate for the Petitioners.

Mr. Pranay A. Kamat, Advocate for Respondents No.2 & 3.

Coram:- N. M. JAMDAR, J.

Date:- 10th February, 2015

ORAL JUDGMENT :

Shri V. Rodrigues, the learned Counsel for the petitioners seeks leave to delete respondents no.1,4 & 5. Deletion is granted at the risk of the petitioners. Amendment to be

carried out forthwith.

2. Rule. Rule made returnable forthwith. Respondents waive service. Taken up for disposal.

3. By this petition, the petitioners challenge the order passed by the Civil Judge, A-Court Mapusa rejecting application filed by the petitioners/plaintiffs for reopening the evidence of the plaintiff no.1.

4. The evidence of PW1 was concluded on 1 November 2014. On that date, according to the petitioners, they realised that legal representatives of deceased respondent no.1 are to be brought on record. The petitioners were required to file affidavit of evidence of second witness PW2. Thereafter, the matter was adjourned from time to time for examining PW2. An application was filed for adjournment by the petitioners as the petitioners were unable to lead further evidence. On 6 November 2014 the evidence of plaintiff was closed. An application was taken out by the petitioners to reopen the evidence, which was contested by the respondents.

5. The learned Civil Judge took note of the earlier conduct of the respondents and came to the conclusion that no case is made out to reopen the evidence and dismissed the application by the impugned order on 26 November 2014.

6. The petition came up for admission before this Court and learned Single Judge (F.M. Reis, J.) while issuing notice to the

respondents passed the following order:

“P.C.

Heard Mr. Vivek Angelo Rodrigues, learned counsel appearing for the petitioners.

2. Issue notice to the respondents, returnable on 8.1.2015.

3. The above petition challenges the order passed by the learned Civil Judge, Senior Division, Mapusa refusing the recall of PW2.

4. The learned counsel for the petitioners points out that grave injustice would be caused to the petitioners in case they are not permitted to examine PW2 in support of their case. The learned counsel further offers to deposit a sum of Rs. 7000/- in this Court towards costs. The learned counsel further points out that the matter is now posted for final arguments before the learned trial Judge.

4. In the facts and circumstances of the case, until returnable date further proceedings in the Regular Civil Suit No.189/2003/A are stayed, subject to the petitioners depositing in this Court a sum of Rs.7000/-(Rupees seven thousand only) within a period of one week from today. Costs shall be subject to further order in the present petition.

5. Authenticated copy of this order be furnished to the petitioners.”

7. Mr. Rodrigues submitted that grave injustice will be caused to the petitioners if the evidence of the petitioners is closed. He submitted that in the interest of justice he may be given one more opportunity. He submits that the petitioners may be put to such terms and conditions the Court deems fit including the time bound programme for completion of evidence, and costs.

8. Shri P. A. Kamat, the learned Counsel for the respondents submitted that considering the conduct of the petitioners heavy costs be imposed.

9. Though the approach of the learned Civil Judge in rejecting the application in view of the need to dispose of the proceedings early cannot be faulted with as such, at the same time, care needs to be taken that injustice is not caused to a party by shutting out their case forever. Considering the facts and circumstances of the case, I am of the view that an opportunity needs to be given to the petitioners. The prejudice caused to the respondents can be compensated by awarding appropriate costs. Mr. V. Rodrigues submits that an amount of Rs.7,000/- has already been deposited in this Court. The petitioners will deposit additional Rs.3,000/- towards costs in the Registry of this Court within two weeks from today.

10. The respondents be entitled to withdraw the costs of Rs.10,000/- so deposited. In view of this position, the petition is allowed in terms of prayer clause (a) subject to the deposit of costs as aforesaid.

11. The petitioners shall conclude their evidence within 4 dates and will not be entitled to any further extension.
12. The interim order granted in this petition stands vacated.
13. Parties to appear before the learned Civil Judge on 18 February 2015 at 10.00 a.m.

N. M. JAMDAR, J.

NH