

IN THE HIGH COURT OF BOMBAY AT GOA.**WRIT PETITION NO.710 OF 2014.**

M/s. Sonalmaa Constructions
A sole proprietary concern,
Represented by its sole
proprietor Mr. Bharatbai
Govindbhai Mori, Aged 43
years, S/o Govindbhai Premji
Mori, R/o Guru Krupa Bunglow
No:37, Next to Shanta
Durga Temple, Betim,
Porvorim Main Road,
Provorum, Bardez, Goa.

.....Petitioner.

Versus

1 Mrs. Maria Menezes e D'sa,
Widow of Pascoal Jeronimo
D'Sa, Major of age, housewife,
Resident Of Billow, Mapusa,
Goa (Deceased) Through
Legal Representatives,
i.e., Respondents 1 to 11 below:

1(a) Mrs. Daria Lino D'sa e Dias,
Wife of Mr. Casmiro Dias,
Major of age, housewife,

1(b) Mr. Casmiro Dias,
Major of age, married,
Both resident Of P.O.Box
No: 80336, Mombasa-Kenya,
Ease Africa,

1(c) Mr. Albert Simon Dsa,
Son of late Pascoal Jeronimo
Dsa, Major of age,
married storekeeper,

1(d) Mr. Alfredo Vincent Dsa,
Son of late Pascoal Jeronimo

Dsa, Major of age,
unmarried fiter/welder

1(e) Miss. Isabela Deleta Dsa,
Daughter of late Pascoal
Jeronimo Dsa, Major of age,
Spinster, Computer Operator,

1(f) Mrs. Doneta Sabina
Dsa e Dsouza, Wife of James
d Souza, Housewife,

1(g) Mr. James Dsouza,
Major of age, married;

1(h) Mrs. Ramina Flora
Dsa e Fernandes,
Wife of Mr. Francis
Fernandes, Major of age,
married;

1(i) Francis Fernandes,
Major of age, married,
All residents of 40 Ton
Bridge, Crisent,
Kenton-middlesex.

1(j) Mrs. Ruthy Valentino
D Sa e Dsouza,
Wife of Mr. Rupert Dsouza,
Major of age, Housewife
and her husband;

1(k) Mr. Rupert Dsouza,
Major of age, married,
Both residents Of 6488-54
Street NE, Calgary Alberta
Canada 13 J 1Z5,
Presently residing at Billow,
Mapusa, Bardez, Goa.

2. Mr. Anthony Dsa,
Son of Mr. Valentino
Antonio Dsa, Major of age,

married, residing at Billow,
Mapusa, Bardez, Goa.

3. Mr. Valentino Antonio Dsa,
Major of age,
married(deceased);
4. Shri. Subhash R. Kalangutkar,
Major of age, businessman
and his wife;
5. Mrs. Supriya Subhash
Kalangutkar, Major of age,
housewife, Both resident
Of Xettia Vaddo, Mapusa,
Bardez, Goa.
6. Shri. Laxman Vaicunt Tendulkar,
Major of age, Tailor and his wife,
7. Mrs. Urmila Laxman Tendulkar,
Major of age, housewife,
Both resident of C/o Amrut
Tailor, Near Music Factory,
Tali Wado, Mapusa, Bardez, Goa.
8. Mrs. Ramesh Bhakta,
Major of age, National
Beverages, Ambrocio
Commercial Center,
Below Hotel Viena,
Mapusa, Goa;
9. Mrs. K. Vandana Pai,
Age about 44 years, housewife,
d/o G. Pandurang Keni,
Mapusa, Goa.
10. Mr. Vivekanand Uttam Kambli,
Aged about 46 years,
S/o Uttam M. Kambli,
Resident of Mapusa,
Bardez, Goa.

11. Mrs. Varsha Vivekanand U. Kambli,
 Aged 41 years, d/o Mr. Eknath Naik,
 Both resident of Flat no:G-1,
 Block C, Moiresh Apartments,
 Peddem, Mapusa, Bardez, Goa.Respondents.

Shri V. Menezes, Advocate for the petitioner.

CORAM : F.M. REIS, J.

DATE : 28th November, 2016.

ORAL JUDGMENT

Heard Shri V. Menezes, learned Counsel appearing for the petitioner. None for the respondents though served.

2. Rule.

3. Notice issued indicates that the above petition may be disposed off finally at the stage of admission. Though the respondents were served on the last date of hearing, none appeared for the respondents and an opportunity was given to appear. Hence, I proceed to examine the matter on merits.

4. Shri Menezes, learned Counsel appearing for the petitioner points out that the challenge in the above petition is to the closer of the evidence of the original defendant no.11/petitioner herein by the learned Trial Judge. The learned

Counsel further points out that the petitioner was diligently pursuing the matter, but however, on the particular date, as the petitioner was unwell and was residing at Surat, he had not contacted the concerned advocate. The learned Counsel further points out that even the advocate on record did not contact the petitioner nor informed him the next date of hearing. The learned Counsel further points out in support of his sickness a medical certificate was also produced. The learned counsel thereafter has taken me through the reply filed by the respondent to point out that allegations made therein were vague, as there is no specific denial to the contents of the application filed by the petitioner. The learned Counsel further points out that the learned Judge has erroneously passed the impugned order and closed the evidence of the petitioner.

5. I have duly considered the submissions of Shri V. Menezes, learned Counsel appearing for the petitioner and I have also gone through the records.

6. While issuing notice to the respondents by order dated 15.1.2014, I have directed the petitioner to deposit an amount of Rs.15000/- in this Court. It is accordingly pointed out that such

amount has in fact being deposited by the petitioner. As the respondent has chosen to remain absent, the averments made in the petition stands uncontroverted.

7. On perusal of the averments therein the petitioner has good grounds to justify the absence on 20.12.2012 when the evidence of the petitioner was closed. The learned Judge misconstrued the material on record to erroneously come to the conclusion that the petitioner was not entitled to recall the order under challenge. No doubt the petitioner is liable to pay costs quantified at ₹15,000/-(Rupees fifteen thousand only) to the respondent nos.1(a) to 1(k).

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

ORDER

- (i) The impugned order dated 12.9.2014 is quashed and set aside.
- (ii) The order closing the evidence of the petitioner is recalled subject to costs of ₹15,000/- to be paid to the respondent nos.1(a) to 1(k) as a condition precedent.
- (iii) The petitioner is accordingly permitted to lead

evidence in accordance with law.

- (iv) The respondent nos.1(a) to 1(k) are as such at liberty to withdraw the amount of ₹15,000/- (Rupees fifteen thousand only) with interest accrued, if any, deposited before the Registry of this Court towards the costs referred to herein above.
- (v) Rule is made absolute in the above terms.

F.M. REIS, J.

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