

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.650 OF 2014**

Mr. Shaikh Vahid Jahangir alias Shaik Vaid,
Major of age, Resident of Fatima Manzil,
Near 1st water Tank, New Vaddem,
Vasco da Gama, Goa.

.... Petitioner

V/s

1. Mr. Jagdeep Yeshwantrao Chowgule,
son of late Yeshwantrao Chowgule,
57 years of age, Indian National,
Resident of Chowgule House,
Chicalim, Goa.
2. Mr. Daulatrao Yeshwantrao Chowgule,
son of late Yeshwantrao Chowgule,
57 years of age, Indian National,
Resident of Chowgule House,
Chicalim, Goa.
3. Mr. Jagdish Yeshwantrao Chowgule,
son of late Yeshwantrao Chowgule,
57 years of age, Indian National,
Resident of Chowgule House,
Chicalim, Goa.
4. Mr. Jaywant Yeshwantrao Chowgule,
son of late Yeshwantrao Chowgule,
57 years of age, Indian National,
Resident of Chowgule House,
Chicalim, Goa.
5. Mrs. Sheela Chowgule,
Daughter of late Yeshwantrao Chowgule,
55 years of age, Resident of 34, Lengkok,
Gopeng Amangolfpoh 31350, West Malatsia.
6. Ms. Vidhya Vernekar,
Daughter of late Yeshwantrao Chowgule,

57 years of age, Indian National,
Resident of St. Joaquim Road,
Borda, Margao, Goa.

.... Respondents

Shri Sidhesh Shet, Advocate for the Petitioner.
Shri Sudin Usgaonkar, Senior Advocate with Ms. T. Ghanekar, Advocate
for the Respondent No.1.

CORAM : C.V. BHADANG, J.

DATE : 20th JUNE, 2016

ORAL JUDGMENT :

Rule. Rule made returnable forthwith. The learned Counsel for the respondent no.1 waives service. Heard finally by consent of parties.

2. The order impugned is dated 2/07/2014 by which the petitioner who is the defendant in the suit has been foreclosed from cross-examining the witness PW5/Madhukar Khot. The learned Trial Court by an order dated 30/09/2014 had refused to recall the order dated 2/07/2014 by which cross-examination of the said witness was closed. Undoubtedly, it appears from the record that there were two or three chances and opportunities granted to the petitioners before the order of closing the evidence of PW5 was passed. However, considering the controversy involved in the suit, I find that in the interest of justice and fair trial it would be appropriate that the petitioner is granted opportunity to cross-examine PW5/Madhukar Khot subject to payment of

appropriate costs. Hence, the following order is passed:

ORDER

- (i) The petition is allowed.
- (ii) The impugned order dated 2/07/2014 is hereby set aside.
- (iii) The learned Trial Court shall recall PW5/Madhukar Khot for being cross-examined on behalf of the petitioner.
- (iv) The learned Counsel for the petitioner undertakes that on the date fixed he shall ensure that the witness is cross-examined without fail.
- (v) This shall be subject to the petitioner paying costs of Rs.5,000/- to the respondent as condition precedent.
- (vi) Parties to appear before the learned Trial Court on 11/07/2016 at 10.00 a.m.
- (vii) Rule is made absolute in the aforesaid terms with no order as to costs.

C.V. BHADANG, J.

NH/-