

IN THE HIGH COURT OF BOMBAY AT GOA
MISCELLANEOUS CIVIL APPLICATION NO. 712 OF 2016
IN
WRIT PETITION NO. 240 OF 2016

M/S LAND DEAL, A PARTNERSHIP FIRM
REP. BY ITS PARTNERS SHRI. ELOY
GONSALVES AND ANR.,

... Applicants

Versus

MRS. OLINDA FERNANDES ALIAS OLINDA
DE SOUZA ALIAS ERMINIA OLINDA DE
SOUZA AND 6 ORS.,

... Respondents

Mr. Ganesh Naik, Advocate for the Applicants.

Mr. Akshay Shirodkar, Advocate for the Respondent
Nos. 2, 4 and 5.

CORAM:- C. V. BHADANG, J.

DATE : 27th OCTOBER, 2016

ORAL ORDER:

This is an application for review/recall of the judgment and order dated 12.08.2016 in Writ Petition No. 240/2016. The applicants are seeking permission to recall Mr. Celestino Fernandes, DW-1, for further cross examination.

2. The learned Trial Court by an order dated 04.02.2016 (below Exhibit-D/86), had refused to recall Mr. Celestino Fernandes, DW-1, which was challenged in the aforesaid Writ Petition. This Court while deciding the said petition has observed that, normally indulgence could have been granted on payment of appropriate costs, but for the reason that in the interregnum, Mr. Celestino Fernandes, DW-1 had proceeded abroad. Even during the hearing of the said petition, this Court had ascertained the willingness of the petitioners to bear the costs of travel of DW-1, abroad. At that stage, the petitioners had expressed inability to bear the costs and consequently, the petition was dismissed.

3. Now, the applicants have not only shown willingness to bear the costs, but have also deposited Rs.50,000/- before this Court on 30.09.2016, towards the cost of travel of the witness

to India. The learned Counsel for the applicants undertakes that Mr. Celestino Fernandes, DW-1 shall be cross examined on the date, which may be fixed by the Trial Court. In such circumstances, the applicants are seeking permission to allow them to conduct further cross examination of Mr. Celestino Fernandes, DW-1.

4. I have heard the learned Counsel for the parties and carefully considered the circumstances as obtaining on record.

5. The learned Counsel for the respondent nos. 2, 4 and 5 on instructions, states that the concerned witness, Mr. Celestino Fernandes, DW-1 would be able to visit India and remain present before the Trial Court in the third week of January, 2017 i.e. the week commencing from 16th January, 2017. He submits that the defendants-respondents have not examined any other witness except, Mr. Celestino Fernandes, DW-1

as on today and the suit is fixed for evidence of the respondents on 19.11.2016. The learned Counsel for the respondent nos. 2, 4 and 5 in all fairness states that this Court may pass appropriate orders, as may be deemed fit.

6. Considering that the suit is still at the stage of evidence of the respondents and that the applicants have shown bonafides by depositing Rs.50,000/- towards costs of travel of the witness and with a view to afford a fair opportunity to the applicants, indulgence can be granted.

7. In the result, the following order is passed:

O R D E R

(a) The application is allowed.

(b) The order dated 12.08.2016, is hereby recalled.

(c) The respondents shall keep Mr. Celestino Fernandes, DW-1 present before the Trial Court in the week commencing from 16.01.2017, on a date to be fixed by the Trial Court.

(d) The petitioners shall be permitted to cross examine the said witness.

(e) The petitioners shall not seek any adjournment for the said purpose.

(f) The amount of Rs. 50,000/- lying before this Court, shall be made over to the Trial Court.

(g) The said amount/costs shall be paid to the respondents, after the examination of the said witness is over.

(h) The application is disposed of in the aforesaid terms.

C. V. BHADANG, J.