

**IN THE HIGH COURT OF BOMBAY AT GOA**

**WRIT PETITION NO. 1108 OF 2016**

MR. MARIANO D'SOUZA AND ANR., ... Petitioners  
Versus  
MR. CAMILO FERNANDES D'SOUZA AND 3 ... Respondents  
ORS.,

Mr. Deepak Gaonkar, Advocate for the Petitioners.

Coram:- F. M. REIS, J.

Date:- 1st December, 2016

P.C.:

Heard Shri Deepak Gaonkar, learned Counsel appearing for the Petitioners.

2. The challenge in the above Petition is to the Order dated 03.11.2016 whereby the application filed by the Petitioners to recall DW-3 came to be rejected.

3. The learned Counsel for the Petitioners pointed out that there is an obvious error in recording of evidence of the cross examination of DW-3 which forced the Petitioners to file an application to recall DW-3 to explain the ambiguity and such statements, as against the earlier statements recorded in the affidavit and the earlier part of the cross examination. Learned Counsel further submits that, on the basis of such solitary error in

records the cross examination, the Petitioners apprehend that it would nullify the statements made by DW-3 in the earlier part of the cross examination in the affidavit. Learned Counsel has thereafter taken me through the impugned order to point out that the learned Judge has failed to address such contentions whilst passing the impugned order. Learned counsel, as such, submits that grave injustice would occasion to the Petitioners in case the Petitioners are non-suited in their defence at the time of the final hearing of the suit based on the said error in recording the cross examination by the learned Judge.

4. I have considered the submissions of the learned Counsel appearing for the Petitioners and, with his assistance, I have also gone through the records.

5. The evidence of a witness would have to be read as a whole. A solitary statement by itself cannot nullify the earlier statements made by such witness. The learned Judge shall have to examine the evidence in its entirety alongwith other material on record.

6. In such circumstances, I find that the question of interference in the impugned order at this stage under Article 227 of the Constitution of India, would not arise at all. Nevertheless, liberty reserved to the Petitioners to challenge the impugned order in case any adverse order is passed against the Petitioners

at the time of the final disposal of the suit on merits.

6. Subject to above liberty, the petition stands rejected.

F. M. REIS, J.

msr