

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 13221 OF 2016

1. Anthony Nazareth Baptista
and Ors

..Petitioners.

Vs

1. Marie Therese De Menezes
and Ors

.. Respondents

Mr. Manoj P. Mhatre , Advocate for Petitioners.

Mr. Karl Tamboly i/b Mr. Ameya Malkan, Advocate for Respondents
1,3 and 4.

**CORAM : R.G.KETKAR,J.
DATE : 02/12/2016**

PC:

1. Not on Board. At the request of Mr. Mhatre taken up for admission. Heard Mr. Manoj Mhatre, learned counsel for the petitioners and Mr. Karl Tamboly, learned counsel for respondents no. 1, 3 and 4 at length. Rule. Mr. Tamboly waives service on behalf of respondents no. 1, 3 and 4. At the request and by consent of the parties, Rule is made returnable forthwith and petition is taken up for final hearing.

2. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged the Judgment and order dated 17.10.2016 passed by the learned Judge, City Civil Court, Dindoshi, Goregaon, Mumbai in Chamber Summons No. 953 of 2016 in Suit No. 768 of 1994. By that order, the learned trial Judge rejected the Chamber Summons taken out by the plaintiffs

for amending the plaint.

3. By order dated 1.8.2014, First Appeal No.957 of 2010 was disposed of reserving liberty to the respondents/plaintiffs to take out application for amendment of the plaint as also application for seeking interim reliefs. All the contentions of the appellants therein (respondents herein) were, in reply, kept open. In pursuance thereof, the plaintiffs filed chamber Summons for amendment of the plaint. Mr. Tamboly made a grievance that earlier the plaintiffs had withdrawn the Chamber Summons for amendment unconditionally and thereafter filed present Chamber Summons after 14 adjournments. He submitted that while disposing of the appeal, the learned trial Judge was requested to expedite hearing of the suit as it is of the year 1994. Mr. Mhatre assures that the plaintiffs will not seek undue adjournments and extend full cooperation for early disposal of the suit. Mr. Tamboly submitted that liberty may be reserved to the respondents to file application for disposing of the suit in a time bound manner. He consents for setting aside of the impugned order.

4. In view thereof, by consent of the parties, impugned order is set aside and Chamber Summons is made absolute in terms of prayer clause (a). Amendment in the main suit shall be carried out within one week from today and amended slips shall be made over to the other side during that period. Mr Tamboly assures that within one week from the service of the amended slip, the

respondents will file additional written statement within one week and serve copy during this period on the other side. All contentions of the respondents are kept open.

5. The respondents are at liberty to file application for disposing of the suit in time bound manner. If such application is filed, the learned trial Judge will pass appropriate orders keeping in mind the fact that the suit is of the year 1999.

6. Rule is made absolute in the aforesaid with no order as to costs.

(R.G.KETKAR, J.)