

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.257 of 2017**

1. Shri Raghoba Arjun Shetgaonkar
S/o late Arjun Shetgaonkar,
Major of age, business,
Indian National R/o H. No.704/A,
Murdiwada, Morjim,
Pernem- Goa
 2. Shri Shiva Vishram Shetgaonkar,
S/o late Vishram Shetgaonkar,
Major of age, business,
Indian National,
R/o H. No.713,
Murdiwada, Morjim,
Pernem- Goa.
- .. Petitioners

Vs.

1. The Manager,
Sunset Ashram,
Mandrem, Pernem Goa
 2. Shri Parag Madh Sanghvi,
S/o Madhu Sanghvi,
Major of age, Business
R/o Windor Tower,
Building No.28,
Flat No.2203, 22nd Floor,
Shastri Nagar, Nr. Lokhandwala
circle, Andheri (W), Maharashtra
- .. Respondents.

Mr. Ganesh R. Naik, Advocate for the petitioners.

CORAM :- C. V. BHADANG, J.

DATE:- 13th November, 2017

ORAL JUDGMENT :

On 28/06/2017, a notice for final disposal was issued to the respondent no.1, who is the sole contesting respondent. None

appears for the respondent no.1, though served. The petition is, accordingly, taken up for final disposal.

2. The petitioners are challenging the order dated 23/11/2016, by which the application filed by the petitioners for time to lead evidence, was rejected and the evidence of the petitioners/ plaintiffs, was closed. The petitioners filed an application for recall of the said order, which came to be rejected by the second impugned order dated 09/02/2017.

3. According to the petitioners, on the date of hearing, PW1 Shiva Shetgaonkar was unable to attend, as one of his relatives, Namdev Parab had suffered heart attack and was admitted in the Hospital and the witness was required to remain with him. It is, thus, submitted that there was no intentional absence and the reason for non-attendance ought to have been accepted.

4. On hearing the learned Counsel for the petitioners and considering the ground for non-attendance, which was supported by a medical record and in the interest of fair opportunity, the impugned order needs to be set aside. The petitioners have already deposited an amount of Rs.4,000/- as a condition precedent to issuance of notice. The petition is accordingly allowed. The impugned order dated 23/11/2016 is hereby set aside. The petitioners shall be permitted to lead evidence in the

suit. The petitioners shall keep their witness present positively on the next date. The amount of Rs.4,000/- shall be transferred to the learned Trial Court for being paid to the respondent no.1.

C. V. BHADANG, J.

SMA