

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.309 OF 2017**

1. Mrs Sabas Sequeira,
Major of age,
W/o late Blasio Sequeira
and her children
2. Mr. Ricky Sequeira
Major of age,
S/o late Blasio Sequeira
3. Mrs. Jennifer Sequeira
Major of age,
H. No.75, Gontonaik
Orlim, Salcete Goa
The Petitioner at Sr. No.3
is represented by her Constituted
Attorney Mrs. Ana Luela
D'Souza e Fortes,
wife of Damaso Filipe
Nery Fortes, and daughter
of late Austin D'Souza, residing
at House No.230, Bironaik,
Orlim, Salcete Goa under
General Power of Attorney
executed before Notary
Vinod Pundalik Halarnkar,
Margao Goa, State of Goa
under reg. No.7335/2014
dated 13/10/2014 .. Petitioners

Vs.

1. Mrs. Lucia Pereira e Barreto
Aged 51 years,
d/o late Jorje Minguel Ciriaco
Pereira and her daughter
2. Miss Lizel Barreto
Age 26 years,
d/o Mr. Roque Barreto
(missing for last more than
7 years)

both residing at H.No.352(C)
Khandy, Cavelossim, Salcete
Goa.

3. Mrs. Julia Pereira
Age 49 years,
d/o late Jorje Minguel Ciriaco
Pereira married and her husband
4. Mr. Roy Barreto
Age 54 years,
s/o late Lourenco Barreto
both residing at H.No.329,
Batty, Orlim, Salcete, Goa
5. Mrs. Maria H. Pereira e Fernandes
Age 46 years, d/o late Jorje
Minguel Ciriaco Pereira
married and her husband
6. Mr. Joao Gabriel Fernandes
Age 46 years,
s/o late Francisco Fernandes
both residing at H. No.106,
Udguelem, Orlim, Salcete,
Goa
7. Mr. Alipio Sequeira
Major of age,
s/o late Blasio Sequeira
8. Mr. Celso Sequeira
Major of age,
S/o late Blasio Sequeira
both H.No.75, Gontonaik, Orlim,
Salcete Goa
9. Mrs. Fatima Gomes
Major of age,
Wife of late Filomena Gomes,
And her children
10. Mr. Daryl Gomes,
Major of age,
s/o late Filomena Gomes,

11. Mrs. Birdie Gomes
Major of age,
d/o late Filomena Gomes
married and her husband
12. Mr. Niel D'Cruz
Major of age,
All residing at H.No.not known
Murda Grande, Nuvem, Salcete,
Goa
13. Mr. Franklin Coutinho
Major of age,
s/o late Luis Coutinho and
late Felelecola Pereira,
14. Mr. Fritegerald Coutinho
Major of age,
s/o late Luis Coutinho late Felelecola
Pereira,
15. Miss Farida Coutinho,
Major of age,
d/o late Luis Coutinho and late
Felelecola Pereira
all residing at H.No.136, Luis Vaddo,
Calata, Majorda, Salcete, Goa
16. Mrs. Jeru Pereira e Barreto
Major of age,
d/o late Jorje Minguel Ciriaco
Pereira and her children
17. Mr. Fidelis Barreto
Major of age,
s/o late Joseph Paul Barreto
18. Mr. Felix Barreto
Major of age,
s/o late Joseph Paul Barreto
19. Mr. Freddy Barreto
Major of age,
S/o late Joseph Paul Barreto

20. Mr. Jovito Barreto
Major of age,
s/o late Joseph Paul Barreto
all residing at H.No.not known
Calconda, Navelim, Salcete, Goa
21. Mrs. Conceicao Pereira,
Major of age,
d/o late Jorje Minguel Ciriaco
Pereira married and her husband
22. Mr. Sebastiao Pereira
Major of age,
s/o late Lucio Pereira
both residing at H.No. not known
Comba, Paricotto Cuncolim,
Salcete, Goa ... Respondents

Mr. S. S. Kakodkar, Advocate for the petitioners.

Mr. C. A. Ferreira, Advocate for respondent nos.1, 3, 5 and 6.

Coram :- M. S. SONAK, J.

Date :- 11th April, 2017

ORAL JUDGMENT :-

Heard Mr. Kakodkar for the petitioners and Mr. C. A. Ferreira for respondent nos.1, 3, 5 and 6, who are the contesting respondents.

2. Rule. Rule is made returnable forthwith. With the consent of the learned Counsel for the parties, heard forthwith.

3. In the order dated 10/04/2017, it is recorded that the service is complete in the matter.

4. The challenge in this petition is to the order dated 08/03/2017, by which the learned Trial Judge has closed the petitioners' (original defendants') evidence.

5. From perusal of the impugned order, it does appear that the petitioners have dragged the matter for the last one year without stepping into the witness box. Despite grant of opportunities, the petitioners did not file the affidavit in lieu of examination-in-chief, though the copy of the same, was furnished to the respondents/ plaintiffs.

6. Mr. Ferreira, the learned Counsel for the contesting respondents has placed on record the roznama, which indicates that for the last one year, the petitioners have not been diligent in the matter. Mr. Kakodkar, the learned Counsel for the petitioners points out that even the plaintiffs have not been diligent in the matter. This is entirely irrelevant for the purposes of examining whether there was any justification for making the impugned order.

7. Though, there is, to some extent, negligence or at least, lack of due diligence on the part of the petitioners, the order, directing that the defence evidence be closed, is rather harsh. The respondents, no doubt, may have been prejudiced on account of delay attributable to the petitioners. However, such prejudice is one, which can, in the facts and circumstances of the present case, be compensated by suitable costs. Further, the petitioners are also required to be put to terms, so that the petitioners do not further delay the matter.

8. Accordingly, the impugned order dated 08/03/2017 is set aside. The petitioners shall pay costs of Rs.15,000/- to the respondents. The amount of costs have already been deposited by the petitioners and, therefore, respondent nos.1, 3, 5 and 6, who have contested this matter, are entitled to withdraw the same unconditionally.

9. Further, Mr. Ferreira points out that the matter is fixed before the learned Trial Judge on 12/04/2017 i.e. tomorrow. The petitioners to step into the witness box tomorrow itself, so that evidence can proceed from tomorrow itself, if convenient to the learned Trial Judge. The petitioners, to co-operate fully with

learned Trial Judge, so that there is no further delay in the record of evidence and the disposal of the suit. Unless there is any exceptional circumstance, the learned Trial Judge need not consider motions for adjournments on behalf of the petitioners.

10. Rule is disposed of in the aforesaid terms.

11. All concerned to act on the basis of authenticated copy of the order.

SMA

M. S. SONAK, J.