

Amrut

**IN THE HIGH COURT OF BOMBAY AT GOA
CIVIL REVISION APPLICATION NO.20 OF 2017**

Sanjoy Narayan & Ors	... Petitioner
<i>Versus</i>	
Justice Shri Ferdino I Rebello through his POA	...Respondent

**WITH
CIVIL REVISION APPLICATION NO.29 OF 2017**

Outlook Publishing (India) Pvt Ltd & Ors	...Petitioners
<i>Versus</i>	
Justice Shri Ferdino I Rebello through his POA	...Respondent

Mr Anup Bhambhani, *Senior Advocate with Mr R Rao, Advocate for the Petitioner in CRA No 20 of 2017; and with Mr Rohit Bras De Sa, Advocate for the Petitioner in CRA No 29 of 2017.*

Mr Nitin Sardessai, *Senior Advocate with Ms G Kamat, Advocate for the Respondent.*

CORAM: G.S. PATEL,J
DATED: 6th October 2017

PC:-

1. In the present Civil Revision Applications, a point is canvassed on the interpretation of Article 539(6) of the Portuguese Civil Code and how this is to be read along with Article 535 and Article 537.

2. It appears from the impugned orders that the question of interpretation of Article 539(6) was never raised before the Senior Civil Judge, Panaji. No arguments were advanced on that Article. This is of some importance because it is now argued that the Code itself provides for a limitation period of one year for actions for damages in defamation. This Article is evidently something that the learned Judge would have to consider. In my view it would be difficult to upset the decision of the learned Civil Judge on the basis of a plea never taken before that Court and therefore never considered. The correct approach, therefore, would be to set aside the impugned judgment and remand the matter with a request to the learned Civil Judge Senior Division to decide the Defendant's application under Order VII Rule 11 of CPC afresh, including on the point of law now canvassed.

3. The impugned orders are set aside but without any consideration on merits and for the sole reason mentioned above, viz., that in this appeal a new point of law is sought to be raised. All contentions are specifically kept open. The learned Civil Judge is requested to decide both applications on merits uninfluenced by the previous order but keeping in mind the scope and ambit of the controversy as set out above. The learned Judge is requested to render a decision at his or her earliest convenience, preferably before 31st January 2018.

4. Both sides are agreed that no additional pleadings or affidavits are required to be filed. Both sides, are, of course at liberty to place before the Court such judgments and authorities as they feel necessary.

5. In addition both sides will be at liberty to place on record appropriate translations of the relevant Articles of the Portuguese Civil Code as also the originals.
6. It is again clarified that this order is made without any assessment of the merits of the case on either sides.
7. Both Civil Revision Applications are disposed of accordingly.

G. S. PATEL, J