

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 512 OF 2017**

1. Shri Surinder Kumar Khosla,
of full age, residing at 502/1,
Sankwadi, Arpora,
Bardez, Goa.

..... Petitioner.

V e r s u s

1. Shri Suresh Atmaram Jaca,
of Atmaram Jaca, married,
60 years old, businessman,
residing at 10, Amit Apartments,
Jaiprakash Nagar,
Goregaon (East), Mumbai 400063.
2. Smt. Rajani Suresh Atmaram Jaca,
Wife of Suresh Atmaram Jaca,
52 years old, Housewife,
residing at 10, Amit Apartments,
Jaiprakash Nagar,
Goregaon (East), Mumbai 400063.
3. Shri Pradeep Pundalik Ghadi Amonkar,
Son of Pundalik Ghadi Amonkar,
Married, of full age, residing at
Gangadhar Apartments, (rear building
ground floor), behind Ganesh Mandir,
Corlim, Mapusa, Bardez, Goa.
4. Smt. Roshni Pundalik Ghadi Amonkar,
Wife of Pradeep Pundalik Ghadi Amonkar,
of full age, housewife, residing at
Gangadhar Apartments, (rear building
ground floor), behind Ganesh Mandir,
Corlim, Mapusa, Bardez, Goa.
5. Shri Sunil Dattram Diukar,
Son of Dattaram Diukar, married,

of full age, residing at 71/D-S,
Feira Alta, Duler, Mapusa,
Bardez-Goa.

6. Smt. Tanuja Sunil Diukar,
Wife of Sunil Dattaram Diukar,
of full age, Housewife,
residing at 71/D-S, Feira Alta,
Mapusa, Bardez-Goa.
7. M/s. Maizons Coastline Developers Pvt. Ltd.
A company constituted under the Indian
Companies Act, Having its office at Arpora,
Bardez, Goa.
8. Smt. Viyayalaxmi Surinder Kumar Khosla,
Wife of Surinder Kumar Khosla of full age,
Housewife, residing at 502/1, Sankwadi,
Arpora, Bardez, Goa. Respondents
(registered addresses).

Ms. A. Agni, Senior Advocate with Adv. R. Kamatar for the petitioner.

Mr. E Usapkar, Advocate for Respondent nos.1 and 2.

Coram:- C. V. BHADANG, J.

Date:- 27th June, 2017.

ORAL JUDGMENT:

Rule made returnable forthwith. The learned counsel for the respondent nos.1 and 2 waives service. Heard finally by consent of parties.

2. The petitioner is challenging the order dated 10/4/2017 passed by the

learned Adhoc Additional Senior Civil Judge, Mapusa, thereby dismissing application (Exhibit 96) filed by the petitioner (original defendant no.6 and 7) thus refusing to recall the order closing the cross examination of Pw2, Mr. Milind Kamat).

3. It is contended by the petitioners that he was under impression that Advocate Karkera and his associates, who were engaged by him were looking after the matter. It is contended that Advocate Karkera and his associates, remained absent and therefore the petitioner had to make alternate arrangements as Advocate Karkera was unable to pursue the matter on account of sickness of his wife, who was diagnosed with cancer since 2014 and she was undergoing treatment. It was only around first half of 2015 that the petitioner was informed by Advocate Karkera that his associate Shri Raikar was given instructions to conduct the matter. However, he failed to cross examine PW2 as a result of which the cross examination was closed.

4. The learned trial court has refused to recall the order on the ground that the suit is old and apart from advocate Shri Karkera, his associate was holding power and as such, the inability of advocate Karkera would not be sufficient. The learned trial court has found that the petitioners have not shown diligence in pursuing the matter and getting "timely updates from their

advocates". The learned trial court has finally held that the Court cannot help any party who is not diligent.

5. I have heard Ms. Agni, the learned Senior Counsel for the petitioner and Mr. Usapkar, the learned counsel for the respondent nos.1 and 2. It is true that the suit is old and there were two advocates who were engaged and had filed vakalatnama to conduct the matter. However merely because there was another advocate engaged will not be sufficient in the facts of the present case, to decline permission to recall Pw2. Considering the overall circumstances and in order to afford a fair opportunity and in the interest of justice I find that recall can be allowed subject to condition of payment of appropriate costs. Hence, the following order is passed:

Order:

- (i) The petition is allowed.
- (ii) The impugned order dated 10/4/2017 is set aside, subject to payment of costs of Rs.15,000/- (Rupees fifteen thousand only) to respondent nos.1 and 2 within two weeks from today.
- (ii) On payment of costs aforesaid application Exhibit 96 shall stand allowed as prayed.
- (iii) The trial court shall recall Pw2 and permit the petitioner to cross examine him. The petitioner shall not seek any further time or adjournment

for cross examination of PW2 and shall complete the cross examination on the date fixed by the trial court.

(iv) Rule is made absolute in the aforesaid terms with no order as to costs.

C. V. BHADANG, J.

ap/-