

**IN THE HIGH COURT OF BOMBAY AT GOA**  
**MISCELLANEOUS CIVIL APPLICATION NO.443 OF 2017**  
**IN**  
**WRIT PETITION NO.824 OF 2012**

SHRI. CAETANO F.F. DE FIGUIREDO,  
SMT. ALMAZA NAZAROFF DE  
FIGUEIREDO (DECEASED)  
THROUGH HIS LRS., ... Applicant

Versus

CUSTODIAN OF THE BRANCHES  
OF BANCO NACIONAL ULTRAMARINO,  
REP. BY ITS CUSTODIAN., ... Respondent

Mr. Agnelo F. Diniz, Advocate for the applicant.

Ms. A. Razaq, Advocate for the respondent.

**CORAM :- C. V. BHADANG, J.**

**Date : 8<sup>th</sup> June, 2017.**

**ORAL ORDER :**

This is an application for recall/ review of the judgment and order dated 12/05/2017 in W.P.No.824/2012. The said petition was listed during vacation on 12/05/2017. It appears that prior thereto, the petition was listed on 08/05/2017, on which date, there was no appearance on behalf of the petitioner and hence, the matter was posted on 11/05/2017 and thereafter, on 12/05/2017. On that day, none appeared for the petitioner. This Court, after hearing Ms. Razaq, the learned Counsel for the respondent, dismissed the petition.

2. It is contended by the learned Counsel for the applicant that the applicant or his Advocate were not aware about the listing of the petition in the vacation. It is submitted that the petition could not have been disposed of on merits without hearing the petitioner. The learned Counsel for the petitioner points out that he was out of station during the course of summer vacation and was not aware of the listing of the writ petition and as such, could not make any alternate arrangement in the matter.

3. On behalf of the applicant, reliance is placed on the decision of the Hon'ble Supreme Court, in the case of **SARWAN SINGH VS. KISHAN SINGH**; 2007 DGLS(SC)366 and **GHANSHYAM DASS GUPTA VS. MAKHAN LAL**; 2012(6) Bom.C.R. 230 and also decision of this Court in the case of **LUIS F. DE PIADADE LOBO VS. GOA HOUSING BOARD** (M.C.A. NO.768/2015) in First Appeal No.75/2012, dated 28/10/2015, in order to submit that in similar circumstances, the Court had restored the matter after recalling the order.

4. Ms. Razaq, the learned Counsel for the respondent opposes the application. It is submitted that the matter was specifically listed during the course of summer vacation. It is submitted that the petition challenges the order allowing

amendment and no prejudice is caused to the petitioner, particularly when the Executing Court as well as this Court has kept the point of limitation open and which can be agitated by the petitioner before the Executing Court. It is, thus, submitted that in the absence of manifest injustice, the order may not be recalled.

5. I have carefully considered the circumstances and the submissions made.

6. Having regard to the fact that according to the petitioner and his Counsel, they were not aware of the listing of the matter during vacation (as such matters were to be listed by consent of the parties) and in order to give a fair chance to the petitioner, the impugned judgment and order needs to be recalled. In such circumstances, the Civil Application is allowed. The judgment and order dated 12/05/2017 is hereby recalled. W.P.No.824/2012 is restored to file.

**C. V. BHADANG, J.**

SMA