

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.640 of 2017**

1. Mr. Carlos Tavora
Major of age,
Resident of
Trionora Apts,
Panaji Goa 403001 .. Petitioner

Vs.

1. M/s Boshan Developers Pvt Ltd.
A Company registered under
the Companies Act, 1956,
Having its office at B/4 101, 1st
floor, Boshan Homes, Opp.
Shri Bodgeshwar Temple,
Mapusa, Bardez Goa Through
its Director Shri Amir Sadashiv
Gaitonde
2. The Chief Officer,
Mapusa Municipal Council,
Mapusa, Bardez Goa .. Respondents.

Mr. Vijay Palekar, Advocate for the petitioner.

Mr. Shivan Dessai, Advocate for the respondent no.1.

Mr. P. Arolkar, Advocate for the respondent no.2.

CORAM :- C. V. BHADANG, J.

DATE:- 9th August, 2017

ORAL JUDGMENT :

On 19/07/2017, a notice for final disposal was issued.
Accordingly, the parties are heard and the petition is being
disposed off finally.

2. The petitioner is challenging the order dated 04/07/2017 passed by the learned Principal District Judge, Panaji in CMA No.128/2017. That was an application filed by the petitioner under Section 24 of the Code of C. P. (Code, for short) for transfer of CMA No.119/2016/A, for review, before the same Judge (Ms. D. Patkar), who had passed the judgment.

3. The brief facts are that Regular Civil Suit No.121/2009/A was decided by the learned Civil Judge, Senior Division. The said suit was decided by Ms. D. Patkar while she was presiding over 'B' Court and was incharge of 'A' Court, as the 'A' Court was vacant. It so happened that after the decision in the suit, the learned Judge was transferred to Ponda. In the meantime, the respondent no.1 filed an application for review of the judgment, which was placed before 'A' Court at Mapusa, presided over by Mr. S. S. Shirgaonkar. In the meantime, the concerned Judge Ms. D. Patkar came to be again transferred to Mapusa and in that view of the matter, the petitioner filed an application under Section 24 of the Code, seeking transfer and placing of the CMA No.119/2016/A (Review Application) before the same Judge. That application has been rejected.

4. I have heard the learned Counsel for the parties and perused the impugned order.

5. The learned Principal District Judge has accepted that an application for review can be decided by the same Judge “as far as possible.” However, the learned Principal District Judge has observed that there are various review applications pending in various courts and Judges are transferred from one district to other district and in such cases, it will not always be possible to place the review application before the same Judge. There cannot be any dispute with the proposition as discussed by the learned Principal District Judge. What is significant is that the learned Principal District Judge accepts that such an application can be decided by the same Judge as far as possible and normally, the “registry takes care to see that review application is sent to the same Court which passed the judgment and decree.” In view of this, it would have been appropriate to transfer the review application for being placed before the same Judge. Thus, in the peculiar facts and circumstances of the case, I find that it would be necessary and appropriate that the review application is heard and decided by the same judge, who is now posted at Mapusa.

6. In that view of the matter, the petition is allowed. The impugned order is set aside. CMA No.119/2016/A shall be placed before the same Judge, who passed the judgment under review, for deciding it in accordance with law. The review application shall be decided as expeditiously as possible and

preferably, within a period of eight weeks from the date of receipt of this order. Parties to co-operate for early disposal of the application. Needless to mention that this order is limited to transfer of review application only.

C. V. BHADANG, J.

SMA