

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 760 OF 2016**

1. Shri Placido Rodrigues, Major age, R/o
H.No.372, Curca, Canturlim, Tiswadi,
Goa.
(through his Constituted Attorney Shri
Edwin Rodrigues, R/o H.No.372, Curca,
Canturlim, Tiswadi, Goa.
2. Shri Edwin Rodrigues, R/o H.No.372,
Curca, Canturlim, Tiswadi, Goa. Petitioners

Versus

1. Margarida Antonio D'Souza alias
Janelin D'Souza, Major age, R/o
H.No.4, Near the Bridge, Curca,
Tiswadi, Goa.
2. Baptista D'Souza, Major age, R/o
H.No.4, Near the Bridge, Curca,
Tiswadi, Goa.
3. Arnald D'Souza, Major age, R/o
H.No.4, Near the Bridge, Curca,
Tiswadi, Goa. Respondents

Mr. Nigel Da Costa Frias, Advocate for the Petitioners.

Mr. Ryan Menezes, Advocate for the Respondents.

CORAM:- C. V. BHADANG, J.

DATE:- 27th JANUARY, 2017

ORAL JUDGMENT:

Rule made returnable forthwith. Mr. Menezes, the learned Counsel for the respondents, waives service. Heard finally by consent of parties.

2. The petitioner is challenging the closure of the evidence of DW-2, Ramdas Palyekar and the consequent absence of an opportunity to cross examine the said witness.

3. The learned Counsel for the petitioners has pointed out that as per the order sheet dated 27.05.2016, the matter was fixed for arguments on Exhibit D/104 (which was an application for review) on 10.06.2016. It is submitted that there was some misconception about the stage of the matter, hence, the cross examination could not be conducted. The learned Counsel submits that in the interest of justice a fair opportunity be granted.

4. The learned Counsel for the respondents submits that the ground on the suit being fixed for arguments on Exhibit D/104 was not taken before the Trial Court, while seeking time. It is submitted that the Advocate appearing for the petitioners had

simply requested to take up the matter later and when the matter was called out in the second and third rounds, there was no appearance.

5. I have carefully considered the rival circumstances and the submissions made. It does appear from the order sheet dated 27.05.2016 that the suit was fixed for arguments on Exhibit D/104. It appears that the learned Counsel for the petitioners had requested the Trial Court to take up the matter later. Be that as it may, it is not disputed that the evidence on behalf of the respondents is still going on and is not yet complete. Thus, in the interest of justice and for fair trial, opportunity is granted to the petitioners, subject to appropriate costs. The learned Counsel for the petitioners undertakes that DW-2 shall be cross-examined when he is present and no further time shall be sought.

6. In such circumstances, the following order is passed:

(a) The Writ Petition is allowed.

(b) The impugned order by which the cross examination of DW-2 on behalf of the petitioners is

closed, is hereby set aside.

(c) The petitioners shall be permitted to cross examine DW-2, subject to costs of Rs.3,000/-, to be paid to the respondents/defendants.

(d) The petition is disposed of in the aforesaid terms.

C. V. BHADANG, J.

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