

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.235 OF 2017**

1. Shri Subhash Velingkar,
Son of Subhash Velingkar,
Aged about 68 years, married,
Retired teacher and his wife,
2. Smt. Sushma Velingkar,
Wife of Subhash Velingkar
Aged about 63 years,
Both resident of H.No.63,
Dada Vaidya Road,
Near Mahalaxmi Temple,
Panaji, Goa. .. Petitioners

Versus

1. Smt. Laxmi Laxman Toraskar
Wife of late Laxman Toraskar
Aged about 52 years, Service,
Resident of H.No.219,
Haliwada, Britona, Bardez,
Goa .. (Original plaintiff)
2. Shri Sanjay Laxman Toraskar,
Son of late Laxman Toraskar,
Aged about 31 years, unmarried,
Occupation Service.
3. Shri Omprakash Laxman Toraskar
Son of late Laxman Toraskar
Aged about 22 years, student,
Unmarried, both resident of
H.No.219, Haliwada, Britona,
Bardez, Goa
4. Smt. Swapna Vishwas Naik,
Wife of Vishwas Naik,
Aged about 30 years,
Housewife, and her husband
5. Shri Vishwas Naik,
Son of Vaman Naik,

Aged about 37 years, Service,
Both resident of H.No.155 E/2,
Duler, Mapusa, Bardez, Goa.

6. Shri Ramchandra Anand Sinai
Rataboli,
Son of Anand Sinai Rataboli,
Married, business,
7. Smt. Sitabai Ramchandra Sinai
Rataboli
Daughter of Keshav Kamat,
Housewife, major of age,
Both r/o. H.No.is not known,
Penha de France, Bardez-Goa .. Respondents.

Mr. J. J. Mulgaonkar, Advocate for the petitioners.

Mr. P. Arolkar, Advocate for respondent nos.1 and 2.

CORAM :- F. M. REIS, J.

DATE : 3th April, 2017

ORAL JUDGMENT :

Heard Shri J. J. Mulgaonkar, the learned Counsel appearing for the petitioners and Shri Arolkar, the learned Counsel appearing for respondent nos.1 and 2.

2. Rule. With the consent of the learned Counsel for the parties, rule is made returnable forthwith. The learned Counsel for respondent nos.1 and 2 waives service.

3. The challenge in the above petition is to the orders dated 04/08/2015, closing the cross-examination of PW1 as well as to the order dated 02/09/2016, whereby the learned Judge refused to recall of the order dated 04/08/2015.

4. The learned Counsel appearing for the petitioners points out that on 04/08/2015, when the matter was posted for cross-examination of PW1, in view of the absence of the concerned petitioner, the Junior Advocate sought time. It is further pointed out that written application was filed by the Junior Advocate for adjournment, on the instructions of the Counsel on record. It is further pointed out that thereafter, the petitioners filed an application for recall of the order dated 04/08/2015. The learned Judge has refused to exercise discretion on the ground that the petitioners had sought four adjournments and rejected the application filed by the petitioners. The learned Counsel appearing for the petitioners submitted that the suit filed by the respondent no.1 is for declaration and grave prejudice will be caused to the petitioners in case cross-examination of PW1 is closed. The learned Counsel, as such, submits that both the impugned orders be quashed and set aside.

5. On the other hand, the learned Counsel for respondent nos.1 and 2 submits that the prayers made by the petitioners are untenable. It is pointed out that some of the adjournments sought by the petitioners are on frivolous grounds and only to delay the matter and as such, there is no error committed by the learned Judge in refusing to exercise discretion to grant such an adjournment.

6. Considering the submissions made by the learned Counsel for the parties and having gone through the impugned orders, I am inclined to consider the relief sought by the petitioners. No doubt, the motion for adjournment was not justified nevertheless the fact is undisputed that in view of the absence of the Advocate, the cross-examination came to be closed. The learned Counsel appearing for the petitioners submitted that the suit filed by the respondents is for declaration and grave prejudice will be caused to the petitioners in case the cross-examination of PW1 is closed. Considering the peculiar facts and circumstances of the case and in the interest of justice as there are no malafides attributed to the petitioners herein, I find that the petitioners are entitled to cross-examine PW1, subject to payment of exemplary costs of Rs.10,000/-, as

condition precedent, to be paid to respondent no.1.

7. In view of the above, the following order is passed :

ORDER

- i) The impugned orders dated 04/08/2015 and 02/09/2016 are quashed and set aside.
- ii) The petitioners are at liberty to cross-examine PW1 on the date fixed by the learned Judge, subject to payment of costs of Rs.10,000/-, as condition precedent, to be paid by the petitioners to respondent no.1 on behalf of all the other respondents.
- iii) Rule is made absolute in the aforesaid terms.

SMA

F. M. REIS, J.