

**IN THE HIGH COURT OF BOMBAY AT GOA**

MISC.CIVIL APPLICATION NO. 269 OF 2018

IN

WRIT PETITION NO. 42 OF 2017

AGNELO FRANCISCO XAVIER DE MARIA  
MASCARENHAS AND 2 ORS.,

... Applicants

Versus

DICKSON DELFINO ALMEIDA @ DICSON  
ROQUE LEANDRO ALMEIDA AND 11 ORS.,

... Respondents

Shri R. G. Ramani, Advocate for the Applicants.  
Ms. Rosette Pereira, Advocate for the Respondent No.1.

Coram:- M. S. SONAK, J.

Date:- 7th May 2018

P.C.

Heard Shri Ramani, learned Advocate for the  
Petitioner-Applicants.

2. This application seeks for orders under the provisions of Order 5 Rule 9 of the Civil Procedure Code in respect of service upon respondent nos.1 and 6. There is no necessity to make any specific order with regard to service upon respondent no.1 because Ms. R. Pereira, learned Advocate, has filed appearance on behalf of respondent no.1. This means that respondent no.1 is duly served and represented in this Petition.

3. The respondent no.6 is stated to be the wife of respondent no.1. In the application which is duly supported by an affidavit, it is stated that necessary steps have been taken to effect service upon respondent no.6. Such notice been properly addressed, prepaid and duly sent by registered post acknowledgment due to both the respondent no.1 as well as respondent no.6. The respondent no.1 has now appeared through Counsel. However, in so far as respondent no.6 is concerned, the postal acknowledgement due is not yet received even though a period of 30 days has elapsed.

4. The proviso to Order 5 Rule 9 of the Civil Procedure Code states that where the summons was properly addressed, prepaid and duly sent by postal acknowledgement due, the declaration referred to in sub-rule (5) that summons have been duly served upon the defendant, shall be made notwithstanding the fact that the acknowledgment having been lost or mislaid or for any other reason has not been received by the Court within 30 days from the date of issue of the summons.

5. Applying the principles set out in the proviso to Order 5 Rule 9 of the Civil Procedure Code, this is a fit case where it can be declared that the service has been duly effected upon respondent no.6 as well.

6. Accordingly, this Civil Application is disposed of by declaring that service is complete on both respondent no.1 as well as respondent no.6 in the aforesaid terms.

7. Place the main matter Writ Petition No.42 of 2017 on 11.06.2018 for admission.

M. S. SONAK, J.

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