

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NOS.19 AND 21 OF 2018

WRIT PETITION NO.19 OF 2018

Silvina Silveira
Rep. By her Att. Amaresh S. Ballali, ... Petitioner

V e r s u s

Rashmi R. Naik & 7 Ors. ... Respondents

Shri Mahesh Amonkar, Advocate for the Petitioner.
Shri D. J. Pangam and Shri S. P. Munj, Advocates for the
Respondent nos.1 and 2.

AND

WRIT PETITION NO.21 OF 2018

Silvina Silveira
Rep. By her Att. Amaresh S. Ballali, ... Petitioner

V e r s u s

Maria Salvador Fernandes & 6 Ors. ... Respondents

Shri Mahesh Amonkar, Advocate for the Petitioner.
Shri A. D. Bhobe and Ms. S. Bhobe, Advocates for the
Respondent no.1.

Coram:- NUTAN D. SARDESSAI, J.

Date : 26th March 2018

P.C.

Heard Shri Mahesh Amonkar, learned Advocate for the
Petitioner and Shri D. J.Pangam, learned Advocate for the
respondent nos.1 and 2.

2. i have considered the impugned order dated 29.07.2017 pursuant to which the learned MACT Ponda declined the relief to the petitioner to produce additional documents and to carry out amendment to the written statement in defence. The proposed amendments were basically to substantiate the case of the petitioners as initially carved out in their written statement.

3. It was the contention of Shri Amonkar, learned Advocate for the petitioners that it was a fit case to quash and set aside the impugned orders and to allow the production of additional documents and the amendment and in which context he placed reliance in **Chakreshwari Construction Pvt. Ltd. vs. Manohar Lal** [2017 (5) SCC 212].

4. Shri D. J. Pangam and Shri A. D. Bhohe, learned Advocate for the respondents contended that no due diligence was shown by the petitioner for the delay in seeking the proposed amendment to the written statement and that it would cause untold hardship to the respondent no.1 and the original claimant in case such an amendment was permitted and the petitioner was allowed to produce the documents on record.

5. i have considered the contentions, the order under challenge and also the judgment in **Chakreshwari Construction** (supra). Besides i have considered the pleadings namely the claim statement, that in defence filed on behalf of the petitioner and in that context find that the case carved by the petitioner for production of documents was in order and had to be granted by the learned MACT. Besides i have considered the provisions of Order VI Rule 17 of the Civil Procedure Code, juxtapositioned in the context of the judgment in Chakreshwari Construction (supra) and in that view of the matter, also come to an affirmative conclusion in the petitioner's favour that the learned MACT ought to have permitted the proposed amendment which was necessary to spell out in detail the case of the petitioner and which was in consonance with the earlier case set out in defence.

6. In the circumstances, therefore, the impugned orders are quashed and set aside and leave granted to the petitioner to produce additional documents and to amend the written statement.

7. The Petition is disposed off with costs of ₹5000/- to the respondent no.1.

8. Leave is granted to the respondent no.1 to produce additional documents, if any, having allowed liberty to the petitioner to produce additional documents and to amend the written statement in defence.

NUTAN D. SARDESSAI J.