

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL MISC. APPLICATION NO. 193 OF 2019

IN

CRIMINAL REVISION APPLICATION NO. 5 OF 2019

ELVIS LOBO., ... Applicant

Versus

CELIA LOBO AND ANR., ... Respondents.

Mr. S. Sardesai, Advocate for the applicant.

Mr. J. Lobo, Advocate for the respondent no.1.

Mr. P. Faldessai, Addl. Public Prosecutor for the respondent
no.2.

Coram:- PRITHVIRAJ K. CHAVAN, J.

Date:- 11th October, 2019

P.C.

Heard Mr. S. Sardesai, learned Advocate for the applicant and

Mr. J. Lobo, learned Counsel for the respondent no.1.

2. Learned Counsel for the applicant seeks to recall of the order
passed by this Court on 26.6.2019 in Criminal Revision No.5/2019.

The order reads thus:-

"Called for the second time. None for the applicants.

2. *By order dated 20.02.2019, the learned Counsel for the applicant had made a statement that the applicant alongwith his family members had vacated the subject premises at Altinho. It was also submitted that the father of the applicant namely Mr. Felipe*

Lobo had also vacated the said premises, in support of which an affidavit of Mr. Felipe Lobo was also produced on record on the same day.

3. *The affidavit of another applicant Mr. Elvis Lobo has also been filed on 13.03.2019. Para 23 of the affidavit also indicates that he and his wife had left the premises on 24.12.2018. However, it indicates that his father was forced to reside alone in the said premises which cannot be countenanced in view of the statement made before this Court on 20.02.2019.*
4. *Since the applicants have already vacated the subject premises, nothing survives in this revision application which needs to be disposed of as infructuous."*

3. Mr. Sardessai, submits that there was bonafide mistake to note the date and, therefore, none appeared for the applicant.

4. On the other hand, Mr. Lobo, learned Counsel for the respondent no.1 strongly opposed the prayer of the applicant in view of the Judgment of the Supreme Court in the case of ***Sunita Jain Vs Pawan Kumar Jain and others***¹. Paragraph 30 of the judgment reads thus:-

"To us, the learned counsel for the appellant is right that in substance and in reality, the High Court has exercised power of review not conferred

1(2008) 2 SCC 705

by the Code on a criminal court. Section 362 of the Code does not empower a criminal court to alter its judgment. It reads thus:-

“363. Court not to alter judgment.- Save as otherwise provided by this Code or by any other law for the time being in force, no court when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error.”

(Emphasis supplied)

5. What has been stated in the order dated 26.6.2019 as above and in view of ratio laid down by the Supreme Court, application is devoid of substance and hence, dismissed.

PRITHVIRAJ K. CHAVAN, J.

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