

IN THE HIGH COURT OF BOMBAY AT GOA
CIVIL REVISION APPLICATION NO. 7 OF 2014

- 1) Mr. Antonio Agnelo do Perpetuo
Socorro D'Costa, son of late
Minguel D'Costa, aged 53 years
and his wife
- 2) Mrs. Reny Ruby Baretto e D'Costa,
aged 39 years,
- 3) Mr. Jose do Perpetuo Sucorro
D'Costa, son of late Minguel
D'Costa, aged 51 years, and his
wife,
- 4) Mr. Jaime Bella Marthins e D'Costa,
aged 37;
- 5) Mr. Justo Das Santas Almas do
Perpetuo Succoro D'Costa, son of
Late Minguel D'Costa, aged 46,
and his wife,
- 6) Mrs. Jessica Regina Rose Maria
Barbosa e D'Costa, aged 38;
- 7) Mr. Donato Laureant do Perpetuo
Socorro D'Costa, son of late
Minguel D'Costa, aged 45; and his
wife,
- 8) Mrs. Elvira Ciana D'Costa, aged 37;
- 9) Mr. Joao Baptista do Perpetuo
Sucorro D'Costa, son of late
Minguel D'Costa, aged 39,
- 10) Mr. Wilson Rosario Agnelo do
Perpetuo Succorro D'Costa, son of
late Joao Piedade Nazaxiano

D'Costa alias John Anthony,
D'Costa, aged 32, and his wife,

- 11) Mr. Walvin Henry do Perpetuo
Socorro D'Costa, aged 30;
- 12) Mr. Alberto D'Costa, son of late
Antonio Joao D'Costa, aged 68,
and his wife,
- 13) Mrs. Lina Angela Pereria e Costa,
aged 64,
All residents of House No.197,
Dessonaik, Orlim, Salcete-Goa.

.... Petitioners

V e r s u s

- 1) Mrs. Reginaldina Saudei Colaco e
Martins (deceased), through her
legal heirs:

(a) Mrs. Maria Erodiana Antao e Martins,
major and her husband;
- 2) Mr. Estevam Alexinho Victor
Matins, aged 43;
- 3) Mr. Jovito Rudolfo Jeronimo
Martins (deceased)

All residents of House No.158,
Novangully, Varca, Salcete-Goa

- 4) Ms. Querobina Martins,
aged 37, daughter of late
Narcisco Thomas Martins,
resident of House No.158,
Novangully, Varca, Salcete-Goa.

.... Respondents

Mr. S. D. Lotlikar, Senior Advocate with Adv. Ms. A. Naik for the

Applicants.

Mr. S. Usgaonkar, Senior Advocate with Adv. Ms. V. Palyekar for the Respondents.

Coram:- C. V. BHADANG, J.
Date:- 19th March 2019.

J U D G M E N T:

Heard the learned counsel for the parties.

2. By this Revision application, the applicants are challenging the order dated 23/9/2013 passed by the learned District Judge at Margao in Civil Review Application no.19/2012. By the impugned order, the Review application filed by the applicants seeking review of the judgment and decree dated 6/8/2009 in Regular Civil Appeal no.103/2008, has been dismissed.

3. Mr. Usgaonkar, the learned Senior Counsel for the respondents, placing reliance, on the decision of the Supreme Court, in the case of **DSR Steel (Private) Limited Vs. State of Rajasthan and others (2012) 6 SCC 782** has raised a preliminary objection to the maintainability of the Civil Revision application. It is submitted that once the Review application was dismissed, the decree which was sought to be reviewed was neither reversed nor altered or modified and in such a contingency, there is no question of any, merger and in such a case it is the original decree or order which has to be

challenged within the time stipulated by law, and not the order dismissing the review petition. It is submitted that the applicants have already file second appeal no.53/2015 against the original decree and applicants cannot prosecute two remedies in the matter.

4. Shri Lotlikar, the learned Senior Counsel for the applicants submitted that in the event this Court is inclined to uphold the preliminary objection, appropriate additional substantial question of law, may be framed in Second Appeal no.53 of 2015.

5. I have considered the submissions made.

6. The Hon'ble Supreme Court in the case of **DSR Steel P. Ltd. (supra)** has found that different situations arise in relation to review petitions, before the Court or the Tribunal. We are presently concerned with a situation as envisaged in paras 25(3) of the judgment which reads thus:

25.3. The third situation with which we are concerned in the instant case is where the revision petition is filed before the Tribunal but the Tribunal refuses to interfere with the decree or order earlier made. It simply dismisses the review petition. The decree in such a case suffers neither any reversal nor an alteration or modification. It is an order by which the review petition is dismissed thereby affirming the decree or order. In such a contingency there is no question of any merger and anyone aggrieved by the decree or order of the Tribunal or Court shall have to

challenge within the time stipulated by law, the original decree and not the order dismissing the review petition. Time taken by a party in diligently pursuing the remedy by way of review may in appropriate cases be excluded from consideration while condoning the delay in the filing of the appeal, but such exclusion or condonation would not imply that there is a merger of the original decree and the order dismissing the review petition.

It can thus be seen, that when the application, for review filed by the applicants was dismissed, the applicants ought to challenge the original judgment and decree which indeed they have done by filing Second Appeal no.53/2015. In that view of the matter, the Civil Revision Application is disposed off with no order as to costs and an appropriate additional substantial question of law is framed in the Second Appeal.

C. V. BHADANG, J.

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