

IN THE HIGH COURT OF BOMBAY AT GOA

MISC.CIVIL APPLICATION NO. 1011 OF 2018

IN

WRIT PETITION NO. 583 OF 2017

RAMESH RAMSINGH GURKHA AND ANR., ... Applicants

Versus

DURGARAM SHANKAR NAIK., ... Respondent

Adv. Samir Taleigaonkar for the Applicants.

Coram:- C. V. BHADANG, J.

Date:- 11th September, 2019

P.C.:

Heard the learned counsel for the applicants.

2. By this application, the applicants (original petitioner nos. 3 and 4) are seeking recall of the order dated 16/8/2017 passed in Writ petition no.583/2017. This Court on the basis of the affidavit of the present respondent no.1 (the original petitioner no.1) had disposed off the petition in as much as the respondent no.1 had undertaken to remove the extension as directed by the judgment and decree dated 22/9/2008, on or before 31/8/2017. The contention on behalf of the applicant is that the present applicants, who were also the co petitioners were not taken into confidence before the first respondent filed the aforesaid

affidavit. The contention in my considered view cannot be accepted for the reason that the present applicants along with the respondent nos.1 and 2 (the original petitioner nos. 1 and 2) were represented by an advocate, who was present when the order dated 16/8/2017 was passed. However, in order to give a quietus to the matter, I have also heard the learned counsel for the applicant on merits, in so far as the challenge in writ petition no.583/2017 is concerned. The challenge in the said petition is to the order dated 7/1/2017 passed by the Executing Court directing the demolition of the subject structure. It is undisputed that the decree which is sought to be executed has attained finality, as the Second Appeal filed by the applicants before this Court has been dismissed. Thus, no exception can be taken to the impugned order passed by the Executing Court directing execution of the decree by demolition of the subject structure. Thus even on merits, no case for interference is made out. The application is accordingly dismissed.

C. V. BHADANG, J.

ap/-