

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION No.634 OF 2019

1. Mr. Audhut Bhagwant Naik,
s/o late Bhagwant Damu Naik,
aged 62 years, married, retired,
r/o H. no:163, Simpall Wado,
Sancoale – Goa.

2. Mr. Somnath Bhagwant Naik,
s/o late Bhagwant Damu Naik,
aged 58 years, married, retired,
r/o of Savordem, Salcette Goa

... Petitioners.

V/s.

Miss Assisa Fatima Terezinha,
Daughter of late Mr. Arnaldo,
Aged 70 years, spinster,
Retired, r/o flat no: G-4,
Silver Glades, Sanvoddem,
Margao – Goa.

... Respondent.

Mr. Athnain Naik, Advocate for the Petitioners.

Mr. U. R. Timble, Advocate for the Respondent.

Coram: M. S. SONAK, J.

Date: 13th July, 2021

ORAL JUDGMENT:

Heard Mr. Athnain Naik, learned Counsel for the petitioners and Mr. U. R. Timble, learned Counsel for the respondent.

2. Rule. Rule is made returnable forthwith at the request of and with the consent of learned Counsel for the parties.

3. The challenge in this petition is to the order dated 15.02.2019 by which the learned trial Judge has dismissed the petitioner's application for re-opening the evidence of PW-1 by recalling the witness.

4. The record indicates that genuine reason were offered by the petitioners for the failure of their Advocate to remain present on 09.01.2019 and continue with or rather commence the cross-examination of PW-1. The reason was that the petitioner's Advocate was held up before the High Court, though, the Advocate expected to be free by the time the matter before the learned trial Judge would come up. The applicant has also explained as to the efforts made by the said Advocate as well as the parties on the said date. In these circumstances, the closure of the opportunity to the petitioners to cross-examine PW-1, appears rather harsh. The learned trial Judge, should have allowed the petitioner's application for re-opening of the evidence by recalling the witness. At the highest, the learned trial Judge should have imposed some costs on the petitioners.

5. Accordingly, the impugned order dated 15.02.2019 is hereby set aside subject to the petitioners paying costs of ₹3,000/- to the respondent-plaintiff. The costs should be paid or deposited within a period of maximum 2 weeks from today. If the costs are not paid or deposited within 2 week from today, this petition shall be deemed to have been dismissed.

6. In the connected matter in civil revision application No.48 of 2019, the Regular Civil Suit No. 67/2014/A has already been ordered to be disposed of expeditiously, i.e. within 6 months. Mr. Naik, learned Counsel for the petitioners assured this Court that the parties and their Advocates will co-operate with the learned trial Court in the matter of expeditious disposal of the suit.

7. The Rule is made absolute to the aforesaid extent.

8. The parties to appear before the trial Court on 26.07.2021 and file authenticated copy of this order.

9. All concerned to act based on the authenticated copy of this order.

M. S. SONAK, J