

Niti

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.8 OF 2020

MARUTI AGARWADEKAR

Son of Late Narayan Agarwadekar,
Major of age, Indian National,
r/o. H. No 216/A, Bhatiwada,
Nerul, Bardez – Goa.

...PETITIONER

Versus

**1. BIKARO @ BAPI NARAYAN
SHIRODKAR,**

s/o Narayan Shirodkar, major in age,
r/o Bhatiwada, Nerul Bardez - Goa.

2. NIVRUTI JAIRAM SHIRODKAR

s/o Jairam Shirodkar, Major in age,
r/o H. No. 292/2, Bhatiwada,
Nerul Bardez – Goa.

3. LATA NIVRUTI SHIRODKAR

w/o Nivruti Shirodkar, major in age,
r/o H. No. 292/2, Bhatiwada,
Nerul Bardez – Goa.

4. SUDESH SHIRODKAR

s/o Narayan Shirodkar, major in age,
r/o H. No. 292/2, Bhatiwada,
Nerul Bardez – Goa.

5. VILLAGE PANCHAYAT OF NERUL

Through its Sarpanch Nerul – Bardez Goa.

...RESPONDENTS

Mr. V. Amonkar, Advocate *for the Petitioner.*

Mr. Neelesh Takkekar, Advocate *for the Respondents No.1 to 4.*

Mr. P.A. Kamat, Advocate *for Respondent No.5.*

CORAM: M. S. SONAK, J.

DATED: 3rd January 2022

ORAL JUDGMENT :

1. Rule. The rule is made returnable forthwith at the request and with the consent of the learned Counsel for the parties.
2. The challenge in this petition is to the order dated 27.08.2019 by which the petitioner's/plaintiff's application for reopening of the evidence was rejected with costs of ₹2,000/-.
3. The impugned order recites that in this matter, the petitioner has sought for no less than 23 adjournments. Further, even after the order dated 02.07.2019, closing the petitioner's evidence was made, the petitioner appeared on two further dates i.e. on 16.07.2019 and 08.08.2019 but no application was filed for recall of the order dated 02.07.2019. The order also records that on 27.08.2019, when the impugned order was made, the trial Court inquired with the petitioner whether the petitioner was willing to examine the next witness immediately, but the petitioner/his learned counsel was not prepared to do the same.

4. There is no good ground made out to interfere with most of the reasonings recorded in the impugned order by the trial Court. However, Mr. Amonkar, learned Counsel for the petitioner is quite right that neither the petitioner nor his advocate, on 27.08.2019 itself, expected that some opportunity would be offered for examination of the additional witness. Mr. Amonkar submits that it is for this reason that the Advocate for the petitioner was constrained to state that no witness could be examined on the said date itself.

5. This is a case where an additional opportunity can be granted to the petitioner provided the petitioner pays exemplary costs. The trial Court has already shown sufficient indulgence to the petitioner but since the impugned order suggests that the Trial Court was prepared to grant yet another opportunity to the petitioner on 27.08.2019 itself, this is a fit case where some indulgence can be extended to the petitioner subject no doubt to the payment of exemplary costs.

6. Accordingly, the orders dated 02.07.2019 and 27.08.2019 are hereby set aside. The petitioner is granted an opportunity to lead further evidence in this matter without seeking any unnecessary adjournments. This relief is subject to the petitioner paying to respondent nos.1 to 4 costs of ₹25,000/- within four

weeks from today. If the costs are not paid or deposited before the trial Court within four weeks from today, then this petition shall be deemed to have been dismissed with costs of ₹10,000/-.

7. If the costs are deposited before the trial Court within four weeks then respondents nos.1 to 4 will have the liberty to withdraw the same unconditionally.

8. The rule is made absolute in the aforesaid terms.

M. S. SONAK, J.