

Niti

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.197/2022

1. Shri Prabhakar Xembu Bhandari, son of late Shri Xembu Bhandari, aged about 62 years, (Senior Citizen), Businessman, Indian National, Resident of Colombm having Taluka Quepemmi Post office at 372, "Jswand", Bepquegal, Curchorem Goa, 403 706.

2. Smt. Padma Prabhakar Bhandari, wife of Shri Prabhakar Bhandari, daughter of late Shri Rama Carbotkar, aged about 55 years, married, Occupation business, Indian National, Resident of Colombm having office at 372, "Jswand", Bepquegal, Curchorem Goa, Taluka Quepemm, Post Curchorem 403 706.

... PETITIONERS

Versus

1. The State of Goa,
Through its Chief Secretary,
Government of Goa,
Secretariat, Porvorim, Taluka
Bardez.

2. The Chief Town Planner,
Town & Country Planning
Department, Government of
Goa, Panaji Goa.

3. The Town Planner, Town
& Country Planning
Department, Government of
Goa, Ponda Goa.

4. Shri Vikas Vidyadhar
Gaonekar, Son of late
Vidhyadhar Vinayak
Gaonekar, allas Vidhyadhar
Vinayak Naik Gaonekar, aged
about 61 years, married,
landlord, Indian National,
residing at 11, Bhadividi,
Bhagya apartments, Andheri
West, Mumbai 400056.

5. Smt. Vikas Gaonekar,
wife of Shri Vikas
Vidhyadhar Gaonekar,
major in age, married,
housewife, Indian National,
residing at 11, Bhadividi,
Bhagya apartments, Andheri
West, Mumbai 400056.

6. Mrs. Lata Guna Naik,
Wife of Guna Shankar Naik,
aged about 64 years, married,
housewife, Indian National,
Residing at "Amrai" Opp.
New Bus Stand, Ponda Goa.

7. Shri Guna Shankar Naik,

son of late Shankar Naik,
aged about 66 years, retired
bank employee, Indian
National, Residing at "Amrai"
Opp. New Bus stand, Ponda
Goa.

8. Shri Simao Antonio
Silveira, Son of late Antonio
Silveira, aged about 58 years,
married, bank employee,
Indian National, Residing at
"Amral" Opp. New bus
stand, Ponda Goa.

9. Mrs. Simao Silveira,
wife of Shri Simao Antonio
Silveira, Major in age,
married, housewife, Indian
National, Residing at "Amrai"
Opp. New bus stand, Ponda
Goa.

10. Prakash Uttam Naik
alias Prakash Uttam Naik
Borkar, age about 54 years,
married, Indian National,
residing at H. No. 25,
Mateywada, Borim, Taluka
Ponda Goa.

11. Smt. Anuradha Prakash
Naik, alias Anuradha Prakash
Naik Borkar, major in age,
married, housewife, Indian
National, residing at H. No.
25, Mateywada, Borim,
Taluka Ponda Goa.

12. The Director, Archieves
& Archeology Department,
Government of Goa, Behind
Peoples High School,
Fontainez Mala, Panaji Goa.

13. Supt. Archeologists,
Archeological Survey of
India, Old Goa, Taluka
Tiswadi.

... RESPONDENTS

**Ms. A.Agni, Senior Advocate with Ms. Jay Sawaikar,
Advocate for the Petitioners.**

**Mr. G. Shetye, Additional Government Advocate for
Respondent Nos.1, 2, 3 & 12.**

CORAM: M. S. SONAK, J.

DATED: 9th June 2022

ORAL JUDGMENT :

1. Heard the learned Counsel for the parties.

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

3. Ms. Agni points out that contesting respondents are respondents nos.10 & 11. Respondent no.10, Mr. Prakash Uttam

Naik, is present in the Court. He states that Smt. Anuradha Prakash Naik – respondent no.11 is his wife.

4. Mr. Prakash Uttam Naik states that he has no objection if the petition is allowed. He has also tendered in writing that his wife and himself have no complaint if the petition is allowed.

5. The learned Trial Judge has, by order dated 04.04.2022, closed the cross-examination of DW1. By further order dated 27.04.2022, the learned Trial Judge has refused to recall the order dated 04.04.2022.

6. The learned Trial Judge has observed that there were directions from the High Court for disposal of the suit in a time-bound manner. The learned Trial Judge has observed that adjournments were applied for on two occasions in the past. Learned Trial Judge has also observed that the Advocate appeared before other Courts in other matters.

7. Although the Trial Judge may have been justified in making the impugned order, the interest of justice requires that the parties do not suffer undue prejudice simply because the lawyer could not attend to the matter on a particular date. Moreover, some costs could have been imposed. Besides, in this case, medical

certificates were also produced at least at the stage of recall of the order, and a scanned copy of a medical certificate was also produced when the order dated 04.04.2022 was made.

8. Ms. Agni has assured this Court that no further adjournments will be applied for on any grounds whatsoever. She has pointed out that the directions to the Trial Judge are to dispose of the matter by 19.07.2022, and all cooperation will be extended to ensure that the learned Trial Judge can dispose of the case. In particular, she submits that no adjournments will be sought by or on behalf of the petitioners. The cross-examination of defendant no.1 will be conducted on the date the learned Trial Judge will indicate.

9. Considering the assurances above and the medical certificates on record, the impugned orders dated 04.04.2022 and 27.04.2022 are hereby set aside, and the petitioners are granted liberty to cross-examine DW1. However, this liberty is granted subject to the above conditions: no adjournments will be applied for by the petitioners, and the cross-examination will be held on the date to be indicated by the learned Trial Judge.

10. The Rule in this petition is made absolute in the terms mentioned above.

11. The petitioners shall, however, pay costs of ₹5,000/- to respondents nos.10 & 11. The costs can be paid to the said respondents before the Trial Court.

M. S. SONAK, J.