

Meena

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.418 OF 2022

1 Shri Hemantkumar Sadanand Naik Gaonkar,
Son of Sadanand Ganaba Naik Gaonkar,
54 years of age,
r/o. H.No.94/1, Ward No.1. Nagarcem,
Canacona Goa.

2 Mrs. Manuja Hemand Bnaik Gaonkar,
Wife of Hemantkumar Sadanand Naik
Gaonkar,
47 years of age,
r/o. H.No.94/1, Ward No.1. Nagarcem,
Canacona Goa.

...Petitioners

Versus

1 Mr. Pio Rogerio Salem Cotta, (since deceased
through LR)
Son of late Mr. Bento Cotta,
Major of age,
r/o. H. No.377, 1st Palvem, Chinchinim,
Salcete, Goa.

1a) Christine Cyril,
Major of age,
widow of Pio Rogerio Salem Cotta
r/o. H. No.377, 1st Palvem, Chinchinim,
Salcete, Goa

2 Mr. Ramesh Sarvottam Sinai Nagarsekar,
(deceased represented through legal heirs)

3 Mr. Seema Ramesh Nagarsekar,
(deceased through legal heirs)

(a) Smt. Reema Probhu Dessai,
major of age,

r/o. Flat No.319/of/CF/s.
Ashok Apartment,
Babgkigall, Curchorem, Goa.

(b) Smt. Kissan Dubhashi (deceased),

- 4 Mr. Suresh Venkatesh Lotlikar,
Son of Venkatesh Lotlikar,
Major of age,
r/o. H.NO. 3/6068, Safiya,
Padma Narayan Estate,
Near Math, Gogol,
Margao- Goa.
- 5 Mrs. Lata Mortu Pai Khot,
Wife of Mr. Mortu alias Ulhas Pai Khot,
Major of age,
r/o. Sadolxem, Canacona – Goa,
present at H.No. 263/3, Ward No.9,
Bliss Travels, Main Street, Palolem,
Canacona- Goa.
- 6 The Canacona Municipal Council,
Represented by its Chief Officer,
Office of Canacona Municipal Council,
Canacona- Goa.

...Respondents.

Mr. A.D. Bhohe with Ms. Annelise Fernandes, Advocates for the
Petitioners.

Ms. Rosette Pereira, Advocate for the Respondent No.6.

Mr. Devidas Pangam, Advocate General with Ms. Maria Correia,
Additional Government Advocate for the Petitioner In SMWP
No.2/2022.

CORAM:

**M. S. SONAK &
BHARAT P. DESHPANDE, JJ.**

Reserved on:

20th December, 2022.

Pronounced on:

2nd January, 2023

JUDGMENT : (Per Bharat P. Deshpande, J.)

Heard the learned Counsel Shri A.D. Bhobe for the petitioners, learned Counsel Ms. R. Pereira for respondent No.6 and learned Advocate General Shri Devidas Pangam along with Ms. Maria Correia, Additional Government Advocate for the Government/ State appearing in SMWP No.2 of 2022 which is taken up along with the present matter.

2. Petitioners approached this Court being aggrieved of denial of issuance of certified copy of the judgment and decree allegedly passed by the learned Civil Judge Junior Division, Cancona in Regular Civil Suit No.120 of 2010 which was disposed of as per the Roznama order dated 14/01/2019.

3. Petitioners are the original defendant No.4 and 5 in the said suit. Respondent No.1 filed the said suit against the other respondents and the petitioner herein for declaration, permanent injunction and specific performance. The said suit was registered as Regular Civil Suit No.129 of 2010. The present petitioners/defendants No.4 and 5 filed their counter claim dated 05/01/2019. Other respondents/defendants filed their written submissions. After the trial was concluded, the learned Judge placed the matter for judgment initially on 12/12/2018 and finally it was adjourned on 14/01/2019. On that day the following order in Roznama/order sheet (Exh.G) was passed :

*“Called out today.
Adv Shri T.Karmalkar present for plaintiff.”*

Adv Ms.A.Panday holding Adv Shri F. Bhangui present for deft nos.1 a and b.

Adv Shri V. Gaykar present for deft nos.3 and 6.

Matter proceeds ex-parte against deft nos.3 and 6.

None present for deft no.7.

Exbt.D/131-Adv for deft nos.1 a and b filed letter of authority. Order passed-file.

Exbt.A/132 - Judgment pronounced-Suit of plaintiff is partly decreed with costs in terms of prayer a, b and c. Consequently counter claim filed by defendant nos.4 and 5 is dismissed with costs. Decree to be drawn accordingly.

Proceeding closed.

JUDGMENT: Proceeding is closed.”

4. This endorsement is only in the Roznama sheet of the file dated 14/11/2019.

5. The petitioners immediately applied for certified copy and their application was registered vide No.17 of 2019. The date of delivery was fixed as 24/01/2019. Since then the petitioners are awaiting for the certified copy of the judgment and decree allegedly passed on 14/01/2019, till date. The petitioners filed representations with the Principal District and Sessions Judge, South Goa and the Registry of this Court. However, the certified copy of the judgment and decree is not provided to him inspite of his repeated requests. The petitioners therefore praying for the following reliefs:

a) For a writ of certiorari or any other appropriate writ, order in the nature of certiorari calling for the records of Regular Civil Suit No. 129/2010 on the file of the Civil Judge Junior Division Canacona and upon perusing the Roznama Order dated 14/01/2019 passed in Regular Civil Suit No.

129/2010, be pleased to quash and set aside the Roznama Order, consequently set aside the dismissal of the Counter claim and decree of the suit as recorded in the Roznama order dated 14/01/2019, with a direction to the Court of the Civil Judge Junior Division Canacona to dispose of the Regular Civil Suit No. 129/2010 and the Counter claim in accordance with the law.

b) For stay of the Roznama Order dated 14/01/2019 passed by the learned Judge in Regular Civil Suit No.129/2010, pending the hearing and final disposal of the present petition.

c) Ex-parte ad-interim reliefs in terms of prayer clause (b) above.

d) Any other order this Hon'ble Court deems fit and proper.

6. On the basis of submission of the Registry of this Court dated 06/10/2022, cognizance was taken of the fact that in many matters the learned Judge while working at Quepem and Canacona failed to complete the judgments and orders and signed copies of the judgments and orders are not in the file, registered as SMWP No.2 of 22. Though initially in the said SMWP the matters from 'A' Court, Quepem wherein the said Presiding Officer/Judge posted at the relevant time were listed in which the original judgments/orders were not found on record, as reported by the Principal District and Sessions Judge, South Goa, Margao.

7. Considering the magnitude of the matters we passed the following orders in SMWP No.2 of 2022 on 19/10/2022 which reads as under:

“1. In this case, the Principal District Judge, South Goa, has

filed a report indicating that there are at least eleven matters where the learned Civil Judge, Senior Division at Quepem has pronounced orders but not prepared or issued certified copies of judgments. In most cases, even the judgments are not found on record.

2. This issue in the context of some particular cases was dealt with by us in Criminal Writ Petition No.578/2022(F) and Criminal Writ Petition No.73/2022.

3. The report now furnished pertains only to the posting of the learned Judge at Quepem. Therefore, we direct the Principal District Judges of North Goa and South Goa to furnish reports latest by 10.11.2022 indicating whether there are any other similar instances at the places where the learned Judge was posted.

4. This matter is now posted for further consideration on 14.11.2022. Therefore, we request the learned Principal District Judges to file their reports latest by 10.11.2022.

5. The Registrar (Judicial) to at the earliest communicate this order to the learned Principal District Judges of the two Districts so that there is no delay in compliance.

6. At our request, learned Advocate General has agreed to assist us in this matter.”

8. In view of the above order, both the Principal and Sessions Judges South and North Goa were called upon to submit their reports about the matter in which orders/judgments are not found duly signed and placed in the respective files, *qua* the said Presiding Officer while working at different places. Such report was received from both the Principal and Sessions Judges. Accordingly, we directed Registrar(Judicial) to compile a consolidated detailed report. Such report is placed at flag 'B' in the SMWP. In the additional chart of civil matters/table C, at Serial No.2 details of Regular

Civil Suit No.129 of 2010 (Pio Rogerio Salema Cotta vs. Ramesh Sarvottam Sinai Nagarsenkar and Ors.) is found mentioned. We also directed Registrar (Judicial) of this Court to call for the records of all such matters and to personally verify whether the signed Judgment /orders are placed in the file. Accordingly, the report is received from Registrar(Judicial) stating that in the records and proceedings of RCS No.129 of 2010 of Canacona, the judgment and decree (signed copy) is not found in the file.

9. In Criminal Writ Petition No.578 of 2022(F) filed by Mr. Shaikh Mohammed Touseef, this Court vide order dated 06/10/2022 took serious cognizance of the absence of signed judgment on record and elaborately discussed the provisions of the Criminal Procedure Code include Sections 353, 354, 362 and 363 wherein a duty of the Magistrate to pronounce the judgment and sign it immediately are expressly provided.

10. It is necessary to note that the observations in CrWP No.578 of 2022(F) is again against the same Judicial Officer/Judge who is named in the present petition as the Presiding Officer of Canacona Court at the relevant time and failed to prepare and sign the judgment in the said Regular Civil Suit. Thus, all our observations including the decisions though in regard to a criminal matters are squarely applicable to the facts and circumstances of this case.

11. Section 33 of the Civil Procedure Code deals with judgment and decree and state that the Court, after the case has been heard, shall pronounce judgment, and on such judgment a decree shall follow.

12. Order XX of the Civil Procedure Code deals with the judgment and decree. Rule 1 provide that The Court, after the case has been heard, shall pronounce judgment in an open Court, either at once, or as soon thereafter as may be practicable and when the judgment is to be pronounced on some future day, the Court shall fix a day for that purpose, of which due notice shall be given to the parties or their pleaders.

13. The proviso to Rule 1 further provided where the judgment is not pronounced at once, every endeavour shall be made by the Court to pronounce the judgment within thirty days from the date on which the hearing of the case was concluded but, where it is not practicable so to do on the ground of the exceptional and extraordinary circumstances of the case, the Court shall fix a future day for the pronouncement of the judgment, and such day shall not ordinarily be a day beyond sixty days from the date on which the hearing of the case was concluded, and due notice of the day so fixed shall be given to the parties or their pleaders.

14. Sub Rule 2 of Order XX of CPC further provided that Where a written judgment is to be pronounced, it shall be sufficient if the findings of the Court on each issue and the final order passed in the case are read out and it shall not be necessary for the Court to read out the whole judgment

15. Sub Rule 3 of Rule 1 of Order XX then provide that the judgment may be pronounced by dictation in open Court to a shorthand writer if the Judge is specially empowered by the High Court in this behalf. Provided that, where the judgment is pronounced by dictation in open Court, the transcript of the judgment so pronounced shall, after making such correction

therein as may be necessary, be signed by the judge, bear the date on which it was pronounced, and form a part of the record.

16. Order XX Rule 3 then mandate that the judgment shall be dated and signed by the Judge in open Court at the time of pronouncing it and, when once signed, shall not afterwards be altered or added, to save as provided by Section 152 or on review.

17. Rule 5 of Order XX further provided that the suits in which issues have been framed, the Court shall state its finding or decision, with the reasons therefor, upon each separate issue, unless the finding upon any one or more of the issue is, sufficient for the decision of the suit.

18. Order XX Rule 6 of the Civil Procedure Code deals with the contents of the decree and provide that the decree shall agree with the judgment and it shall contain the number of the suit, the names and descriptions of the parties, their registered addresses and particulars of the claim, and shall specify clearly the relief granted or other determination of the suit. Such decree shall also state the amount of costs incurred in the suit, and by whom or out of what property and in what proportions such costs are to be paid.

19. Rule 6A further provides that every endeavour shall be made to ensure that the decree is drawn up as expeditiously as possible and, in any case, within fifteen days from the date on which the judgment is pronounced.

20. Rule 6B then provides that where the judgment is pronounced, copies of the judgment shall be made available to the parties immediately after the pronouncement of the judgment for preferring an appeal on

payment of such charges as may be specified in the rule made by the High Court.

21. Thus what is contemplated under the provisions of the Civil Procedure Code is that the judgment must contain the facts, submissions, issues, discussion on such issues on the basis of evidence and conclusion of the Judge on each issue and finally the relief which is granted or refused. Such judgment should be in writing, signed and dated on the date of the pronouncement of the judgment.

22. In the present case it is clear from the reports that though orally some judgments was pronounced on 14/01/2019 as quoted earlier and recorded in the Roznama, there is no such written judgment duly signed by the Presiding Officer is found in the file. The explanations were called from the concerned Presiding Officer by the Principal District and Sessions Judge. However, there is no satisfactory explanation coming forth.

23. In **Ajay Singh & Anr. V/s. State of Chhattisgarh & Anr.**¹ the Hon'ble Supreme Court was concerned with an order passed in the order sheet that the accused persons had been acquitted as per the judgment separately typed, signed and dated. However, a complaint was made that the learned Trial Judge had acquitted the accused persons, but no judgment had been rendered. The High Court issued a memorandum to the District and Sessions Judge to inquire into the matter and submit the report. The report indicated that no judgments were found in the records of the cases. The learned Trial Judge had purportedly delivered the judgment, but they were

¹ (2017) 3 SCC 330

not available on record as the judgments were not actually dictated, dated or signed.

24. After that, the matter was placed before the Full Court of the High Court, and the resolution was passed, placing the Trial Judge concerned under suspension in contemplation of a departmental enquiry. The Full Court also decided to transfer the cases in question from the Court of trial Judge concerned to the Court of the District and Sessions Judge concerned for rehearing and disposal.

25. In the above facts, The Hon'ble Supreme Court was called upon to consider whether the learned Trial Judge had really pronounced the judgment of acquittal on 31.10.2007 and whether the High Court could have, in the exercise of its administrative power, treated the trial as pending and transferred the same from the Court of Second Additional Sessions Judge to the Court of District and Sessions Judge for rehearing and disposal.

26. Accordingly, the Hon'ble Supreme Court commenced its judgment by observing the following :

"Performance of judicial duty in the manner prescribed by law is fundamental to the concept of rule of law in a democratic State. It has been quite often said and, rightly so, that the judiciary is the protector and preserver of rule of law. Effective functioning of the said sacrosanct duty has been entrusted to the judiciary and that entrustment expects the courts to conduct the judicial proceeding with dignity, objectivity and rationality and finally determine the same in accordance with law. Errors are bound to occur but there cannot be deliberate peccability which can never be countenanced. The plinth of justice dispensation system is founded on the faith, trust and confidence of the people and nothing can be allowed to contaminate and corrode the same. A litigant who comes to a court of law expects that inherent and essential principles of adjudication like adherence to doctrine of audi alteram partem, rules pertaining to fundamental adjective and seminal substantive law shall be followed and ultimately there shall be a reasoned verdict. When the accused faces a charge in a court of law, he expects a fair trial. The victim whose grievance and agony have given rise to the trial also expects that justice should be done in accordance with law. Thus, a fair trial leading to a judgment is necessitous in law and that is the assurance that is thought of on both sides. The exponent on behalf of the accused cannot be permitted to command the trial as desired by his philosophy of trial on the plea of fair trial and similarly, the proponent on behalf of the victim should not always be allowed to ventilate the grievance that his cause has not been fairly dealt with in the name of fair trial. Therefore, the concept of expediency and fair trial is quite applicable to the accused as well as to the victim. The result of such trial is to end in a judgment as required to be

pronounced in accordance with law. And, that is how the stability of the creditability in the institution is maintained."

27. Thus in sum and substance, there is no judgment and decree passed in the said civil suit by the learned Presiding Officer though recorded in the Roznama dated 14/01/2019. Such Roznama entry cannot be considered as judgment and decree as provided under the Code of Civil Procedure. For the reasons recorded by us in CrWP No.578 of 2022 dated 06/10/2022, we are constrained to allow this petition as per the prayer clause 'a'.

28. Considering the above unfortunate facts and the submissions of the learned Counsel appearing for both the sides, the Roznama order dated 14/01/2019 in RCS No.129 of 2010 is hereby quashed and set aside. Since there is no signed and dated judgment found on the record, we are unable to consider that the suit was disposed of on merit by the concerned Presiding Officer. Thus, we remand the said Civil Suit No.129 of 2010 to the Civil Judge, Junior Division at Canacona with the direction that the suit be decided after hearing both the sides and in accordance with law within a period of three months from the date of the signed copy of this order is placed before it. It is made clear that both the parties shall co-operate with the learned Canacona Court in disposal of the said matter in the time frame fixed as above.

29. Rule is made absolute in the above terms.

30. The Registry is directed to return records and proceedings of Regular Civil Suit No.129 of 2010 along with the copy of this order to the learned Canacona Court as early as possible.

31. This order be placed before Registrar (Administration) to enable him to do the needful on the administrative side by following the procedure and the law.

BHARAT P. DESHPANDE, J

M. S. SONAK, J