

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA

**WRIT PETITION NO. 598 OF 2019
WITH
WRIT PETITION NO. 599 OF 2019**

- 1 Shri Agostinho Crasto,
of about 51 years of age,
son of Shri Jose Sebastiao Crasto,
and his wife
- 2 Smt Daisy Crasto,
of about 47 years of age,
wife of Shri Agostinho Crasto,
- 3 Shri Rosario Crasto,
of about 49 years of age, son
of Shri Jose Sebastiao Crasto,
- 4 Smt. Felicia Rosario Crasto,
of about 46 years of age,
wife of Shri Rosario Crasto,
- 5 Shri Denzil Crasto,
of about 36 years of age, son
of Shri Jose Sebastiao Crasto,
the Petitioners No. 1 to 5
residents at Chavato,
near KTC Bus Stand, Margao Goa.

... Petitioners

Versus

- 1 Shri Pravas Krishna Naik,
major of age,
son of Shri Krishna N. Naik,

2 Shri Narayan Krishna Naik,
major of age,
son of Shri Krishna N. Naik,

3 Shri Sandesh Krishna Naik,
major of age,
son of Shri Krishna N. Naik,

4 Shri Niresh Pravas Naik,
major of age,
son of Shri Pravas K. Naik,
the Respondents No. 1 to 4
residents at H.No.2832,
Krishsheel, Monte Hill, Borda,
Margao Goa.

5 M/s Sapana Real Estate,
through Shri Narayan Krishna Naik,
the said defendant no.2, with office at
H.No.1448, N. House,
Varde Valaulikar Road, Margao Goa.

6 Smt. Queteria Crasto,
widow of late Shri Jose Sebastiao Crasto,
resident at Chavato, near KTC Bus
Stand, Margao Goa.

7 Shri Peter Crasto, Major of age,
son of Shri Jose Sebastiao Crasto,

8 Smt. Sunita Crasto, Major of age, wife
of Shri Peter Crasto,

the Respondent Nos. 7 to 8 residents at
Chavato, near KTC Bus Stand, Margao
Goa.

9 Smt. Maria Ismalia da Piedade
Menezes e Pimenta, major of age,

10 Shri Antonio Valeriano Pascoal de
Menezes e Pimenta, major of age,
respondent Nos. 9 and 10 residents at
Curtorim, Salcete Goa.

11 Shri (Dr.) Desiderio Rafael de
Menezes, major of age,
resident Opp. Harmonia Club,
Margao Goa.

... Respondents

Mr. Anthony D'Silva and Ms. K. Gracias, Advocates for the
Petitioners.

Ms. Annelise Fernandes and Mr. A. D. Bhobe, Advocates for the
Respondent Nos. 1 to 5.

CORAM: M. S. SONAK, J.

DATED : 2nd MARCH 2023

ORAL JUDGMENT

1. Heard Mr D'Silva, learned counsel for the Petitioners in both these petitions, and Ms A. Fernandes and Mr A. D. Bhobe learned counsel for Respondent Nos. 1 to 5, who are the contesting Respondents.

2. Mr D'Silva states that all the Respondents have been served in these matters.

3. Rule in both these petitions. With the consent and at the request of the learned counsel for the parties, the rule is made returnable forthwith.

4. In both these petitions, the challenge is to the order dated 10.06.2019 made by the trial Court dismissing the Petitioners' (plaintiffs') application at Exhibit C-53 seeking restoration of the suit, which was dismissed for non-prosecution and several Misc. Civil Applications seeking to set aside the *ex-parte* orders made in the matters.

5. The trial Court observed that the Petitioners were not diligent in pursuing the suit. No steps were taken to serve all the Respondents, and no medical certificate was produced to justify the absence of the Petitioners' Advocate on the date when the suit was dismissed for want of prosecution.

6. Though the trial Court was justified in making the above observations, the trial Court has not adequately considered the cause shown by the Petitioners for their failure to take diligent steps. In particular, the trial Court failed to appreciate that when the matter was dismissed for want of prosecution, the Petitioners who were pursuing the matter could not remain present due to some health issues. Additionally, the application seeking restoration or setting aside *ex-parte* orders refers to steps taken by the Petitioners.

7. Mr D'Silva has pointed out that the suit is to question irrevocable power of attorney/agreement obtained fraudulently from the Petitioners. He submits that an additional opportunity should have been given to the Petitioners. He points out that the Petitioners have already deposited an amount of ₹10,000/- towards security for costs. On instructions, he states that the Petitioners will pay a further amount of ₹40,000/- to the contesting Respondents if an additional opportunity is granted so that the contesting Respondents are suitably compensated in these matters. He submits that the order for dismissal is quite harsh and disproportionate.

8. Though there is a lapse on the part of the Petitioners, it does not appear that the lapse was for reasons that could be styled as a malafide. Ultimately, the Petitioners have also suffered because of delay in the proceedings, which are undoubted of their own making. Additionally, the Petitioners have offered to pay costs of ₹50,000/- to the contesting Respondents.

9. Therefore, upon cumulatively considering all the above aspects, including the harshness of the impugned order, a case is made out to grant an additional opportunity to the Petitioners subject to payment of offered costs ₹50,000/- within six weeks from today.

10. Accordingly, both these petitions are allowed, and the impugned orders are set aside. The suit is restored. The orders marking the Petitioners' *ex-parte*, if any, are also set aside. All this is subject to the Petitioners paying costs of ₹50,000/- to Respondent Nos. 1 to 5

within six weeks from today. If the costs are not paid/deposited within six weeks from today, then both these petitions shall be deemed to have been dismissed with costs of ₹10,000/- without further reference to this Court.

11. Respondent Nos. 1 to 5 are granted liberty to withdraw the costs of ₹10,000/- already deposited by the Petitioners in this Court unconditionally. The Petitioners are to deposit the balance costs of ₹40,000/- before the trial Court within six weeks from today. If the amount is deposited, the suit to stand restored, and the Petitioners will benefit from this judgment and order. Further, Respondent Nos. 1 to 5 would be at liberty to withdraw this amount of ₹40,000/- unconditionally. Mr D'Silva states that hereafter the Petitioners will diligently pursue the suit.

12. The parties are to appear before the trial Court on 24.04.2023 at 10.00 a.m. and file an authenticated copy of this order.

13. The rule is made absolute in both these petitions in the above terms.

14. All concerned are to act on the authenticated copy of this order.

M. S. SONAK, J.