



Sonam

**IN THE HIGH COURT OF BOMBAY AT GOA**

**WRIT PETITION NO. 310 OF 2023**

Mr. Jesus Francisco Pobres Matias Dias,  
59 years of age,  
Son of late Santana Des Neves Dias,  
Resident of House No. 765,  
Ganapoga, Rai, Salcete, Goa. ... PETITIONER

***Versus***

1. Mr. Francisco Manuel Da Veiga Coutinho,  
Major of age,  
Son of late Dr. Joaquim Manuel Da  
Veiga Coutinho alias Manuel Da Veiga Courtinho.

2. Mrs. Vincetina Coutinho,  
Major of age,  
Daughter of late Mr. Joaquim Gomes,  
Both residents of H. No. 141,  
Mons, G. Rebello Road,  
Opp. Holy Spirit Church,  
Old Market, Margao, Goa. ... RESPONDENTS

Ms. Shaizeen Shaikh, Advocate for the Petitioner

Mr. Jose Reis, Advocate for Respondent No. 1.

**CORAM:- BHARAT P. DESHPANDE, J.**

**DATED :- 29<sup>th</sup> AUGUST, 2024.**

**ORAL ORDER:**

1. Heard Ms. Shaikh for the Petitioner and Mr. Reis for the Respondents.
2. The present petition is filed challenging the impugned order dated 04.02.2023 passed in Miscellaneous Civil Application No. 7 of 2019 thereby dismissing the application for restoration of earlier restoration application on record.
3. Ms. Shaikh, learned Counsel for the Petitioner would submit that the Petitioner was working abroad and his Advocate was looking after the matter, however due to inadvertence, the Advocate appearing for the Petitioner failed to appear before the Court and accordingly, the said proceedings was dismissed for non appearance of the parties. She submits that suit filed for Specific Performance of Agreement has been dismissed for non appearance which would seriously prejudice the Petitioner, who is plaintiff therein. She submits that the application could be allowed

subject to costs as no prejudice would be caused to the Respondents.

4. Mr. Reis, learned Counsel appearing for the Respondents would submit that suit was filed in the year 2008, however, it was dismissed for default in the year 2008 itself and thereafter, the Petitioner filed an application for restoration which was also rejected. Accordingly, there is no question of filing another application for restoration.

5. Besides this, he submits that the application for restoration of the suit was again dismissed for non appearance of the parties, which shows that the Petitioner is not at all interested in prosecuting the matter.

6. The impugned order passed on 04.02.2023 in MCA 7/2019 would go to show that the same was rejected on different grounds including that the Petitioner has suppressed filing of earlier restoration application before the concerned Court, which was dismissed for want of prosecution.

7. Petitioner vide Memo dated 07.08.2024 placed on record earlier application filed before Fast Track Court vide Civil Miscellaneous Application No. 65 of 2011 along with order passed therein dated 24.10.2011.

8. The records show that Civil Suit was filed by the Petitioner/Plaintiff on 27.06.2007. However, it was dismissed for non prosecution on 26.08.2008.

9. Order dated 24.11.2011 passed by the Fast Track Court in Civil Miscellaneous Application No. 65 of 2011, would clearly reveal that after dismissal of the said suit on 26.08.2008, Plaintiff/Petitioner applied for restoration of the said suit vide Civil Miscellaneous Application No. 78 of 2008, however, such application came to be dismissed for default on 18.11.2008.

10. It further shows that the Petitioner then again approached the same Court by filing Civil Miscellaneous Application No. 65 of 2011, which came to be rejected vide order dated 24.10.2011. The observations of the Fast Track

Court in the said order would go to show that such restoration application filed in the year 2011 is not maintainable and accordingly, it was dismissed.

11. The Petitioner by suppressing such fact of the order passed by the Fast Track Court, approached the Civil Court by filing Miscellaneous Civil Application No. 7 of 2019 along with the condonation of delay application. Though, the delay was condoned, an application for restoration of earlier application was rejected by the impugned order on the ground that there is suppression of the earlier orders passed and the application filed for restoration and that second application for restoration is not maintainable.

12. View taken by the learned Trial Court is fairly justified. Once Civil Miscellaneous Application No. 78 of 2008, for restoration of the suit was dismissed on 18.11.2008, the Petitioner is not entitled to file second application for restoration and that too by suppressing the earlier application and the order therein. In fact, records

show that the present application for restoration is the 3<sup>rd</sup> application filed by the Petitioner, even though, earlier two applications were dismissed and that too by suppressing these facts.

13. The party who is coming with unclean hands and by suppressing material documents, is not at all entitled for any such reliefs. Accordingly, impugned order is not required to be interfered with in the supervisory jurisdiction under Article 227 of the Constitution.

14. The petition stands dismissed. No costs.

**BHARAT P. DESHPANDE, J.**