



Jose

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.396 OF 2025

1. Francis Correia,
S/o Mr. Joseph Correia,
56 years of age married

2. Mrs. Josephine Correia,
Indian national, 52 years of age
Both residing at H.No. 5/202,
Umta Vaddo, Calangute,
Bardez-Goa.

... Petitioners.

Versus

1. Mr. Inacio Anthony Correia,
Indian national,
Major in age,
Married to

2. Mrs. Josephine Correia (Since deceased
through LR's)

2(a) Agnelo Correia,
Son of Inacio Correia,
Major in age, married,

2(b) Espy Caldeira,
Daughter of Inacio Correia,
Major in age, married,

2(c) Stephen Eugene Caldeira,
Husband of Espy Caldeira,
Major in age, married,

All residing at H.No. 5/208,
Umta Vaddo, Calangute,
Bardez-Goa.

... Respondents.

Mr. Gaurish Agni with Ms. Ruchika Mishra, Ms. Leeandra Correia, Mr. Kishan Kavlekar, Mr. Madhav Cuncolienkar and Mr. Yash Naik, Advocates for the Petitioners.

Mr. Pranay A. Kamat, Advocate for the Respondents.

CORAM: VALMIKI MENEZES, J.

DATED: 15th October, 2025

ORAL JUDGMENT:

1. Registry to waive office objections and register the matter.
2. Rule. Rule made returnable forthwith. With the consent of the parties, petition is disposed of finally.
3. The Petitioner has challenged an order dated 28.03.2025 passed by the Civil Judge Junior Division, Mapusa in Regular Civil Suit No.49/2010/F. This order has been passed on Exhibit D-83 which is an application to the Court to discard the written arguments filed by the Defendant Nos. 1 and 2.

The petition also seeks a direction to the Civil Court to draw up the decree on admission, against the Defendant Nos. 1 and 2.

4. The reliefs sought in this petition are pressed for in the following facts and circumstances.

- a) The Plaintiffs/Petitioners herein filed RCS No.49/2010/F seeking a declaration that the Inventory Proceedings bearing No.255/2007/B are null and void, on the averment that the Plaintiffs, who are the children of Joseph Correia, who was one of the children of Joao Amancio Marcelo Lourdes Correia and Maria Rosada Rebello alias Maria Rosa Rebello alias Rosy Correia, whose assets were sought to be partitioned in the said Inventory Proceedings. The case of the Plaintiffs was that the Plaintiffs' father had been left out from the Inventory Proceedings when he was a direct heir to the estate of his parents.
- b) After notice was served on the Defendants, Defendant Nos. 1 and 2 who are the Respondent Nos. 1 and 2 herein, filed three affidavits; the first being of Inacio Correia (Defendant No.1), the second of Stephen Eugene Caldeira for himself as Defendant No.2(b) and as Attorney of Defendant No.2(c), and the third of Inacio Correia who was the Attorney of Defendant No.2(a). Defendant Nos. 2(a) to 2(c) were impleaded in the suit on the death of Defendant No.2 Josephene Correia. The affidavits of Inacio at paragraphs 2, 3, 4 and 8 state that the prayer clauses (a) and (b) (the

declaration that the Inventory is a nullity), may be allowed by the Court on the basis of admission; it further states that the entire case was against Defendant No.1 and that Defendant No.2, who has since expired and represented by legal representatives, have no objection for grant of the prayers. The affidavits further state that considering these facts, the Court may allow the suit as per the prayers made by the Plaintiff and considering the law.

Stephen (Defendant No.2(b), in his affidavit for himself and as Attorney for Defendant No.2(c), has stated that he has made an application to allow the suit by way of admission and that he, along with Defendant No.2(c) does not have any objection to allow the application and dispose of the suit. The same averments have been made by Inacio Correia, who is the Attorney of Defendant No.2(a).

- c) On these affidavits being filed, the Plaintiffs filed an application seeking a decree on admission in terms of Order 12 Rule 6 CPC. This application came to be objected by Defendant Nos.1 and 2(a) to 2(c) who then sought to withdraw the admissions made in their applications. The application to withdraw the affidavits dated 25.01.2020 is at Exhibit D-66 of the file of the Trial Court. These applications came to be rejected by order dated 29.08.2022

where the Trial Court has specifically held that affidavits have been sworn by the parties and the affidavits cannot be withdrawn as it would amount to withdrawal of the admissions contained therein. The order of 29.08.2022 rejecting the application to withdraw the admission has not been challenged by Defendant Nos. 1 to 2(c) and has attained finality.

- d) In the meantime, the Defendant Nos. 1 to 2(c) filed a review application on 13.10.2022 at Exhibit D-70, which came to be partly allowed on 09.01.2023. By this order, the Court held that the review was allowed to the extent that an earlier application at Exhibit D-53 of Defendant Nos.1 to 2(c) to place on record the Will dated 05.05.1994 should be considered along with an application at Exhibit D-64, filed by the Plaintiff for a decree on admission.
- e) Exhibit D-64 filed by the Plaintiff avers that though the Court had arrived at specific findings in its order of 30.09.2022, wherein it held that they were admissions by the Defendant Nos. 1 to 2(c) of the claim of the Plaintiff, the Court had, however, not drawn up the decree based on the order. Exhibit D-64 sought a decree to be passed based on that order.
- f) By two orders, both dated 17.02.2023, the Court rejected the

application of the Defendant Nos.1 to 2(c) at Exhibit D-53 thereby rejecting their contention that the Will needs to be taken on record; in this order, the Trial Court held that if the Defendant No.1 to 2(c) wished to have the Will considered, they were free to reopen the Inventory Proceedings bearing No.255/2007 for considering the Will executed by the mother of Respondent No.1 and the father of Plaintiff No.1, i.e. Maria Rosada Rebello alias Maria Rosa Rebello alias Rosy Correia. This order has not been challenged further by Defendant Nos.1 to 2(c) and has also attained finality.

- g) The Trial Court, by an order of the same date, i.e. 17.02.2023, allowed the application at Exhibit D-64 under Order 12 Rule 6 and directed the Plaintiff to lead evidence qua Defendant Nos. 3 to 11, against whom the suit was proceeding ex parte, and who had not filed any defence. In this order, at paragraph 12, the Court held that the Defendant Nos. 1 and 2 (Defendant No.2 having expired, included Defendant Nos.2(a) to 2(c) as legal representatives), having sworn an affidavit in support of their application, the admission appears to be clear, unambiguous and specific and hence, ought to be accepted. In its order, therefore, the Court unambiguously holds that the admission by Defendant Nos.1 to 2(c) was clear, specific and unambiguous and was accepted by the Court.

- h) Thereafter, since the Trial Court had not passed any formal decree after recording admission of Defendant Nos. 1 to 2(c) of the claim, filed an application at Exhibit D-82 seeking a direction of the Court to draw up a decree in terms of Order 12 Rule 6 (2) CPC. On this application, the Court records that on a similar application at Exhibit D-64, on which the Court had already passed appropriate orders on 30.09.2022, and as such, no further orders are required. The Court disposed of Exhibit D-82, without any specific directions to draw up a decree in terms of the admission of Defendant Nos. 1 to 2(c).
- i) In the meantime, the Court proceeded to record the evidence of the Plaintiff qua Defendant Nos. 3 to 11 against whom the suit was proceeding ex parte. Considering the course of recording this evidence, Defendant Nos. 1 to 2(c) had sought to cross examine the Plaintiff, which the Court disallowed by an order recorded on the evidence sheet on 17.03.2023, wherein the Court recorded that as the claim was admitted by Defendant Nos. 1 and 2, there is no cross examination. This order has also not been challenged by Defendant Nos. 1 to 2(c).
- j) Thereafter, the Defendant Nos. 1 to 2(c), at the stage of final arguments of the suit, sought to place on record their written

final arguments, wherein, in these written arguments, the Defendant Nos. 1 to 2(c) took a stand that the suit was not maintainable, that the suit was not properly valued and the allegations of fraud levelled in the evidence were not proved. It is these written arguments that were sought to be opposed and a direction was sought from the Court through an application at Exhibit D-83 filed by the Plaintiff to discard the written arguments. This was on the basis that since the suit was ordered to be decreed on admission, Defendant Nos. 1 to 2(c) had no right to file written arguments as a decree was to be passed against them. It is this application that came to be rejected by the impugned order dated 28.03.2025.

SUBMISSIONS

5. It is the submission of learned Advocate Mr. Gaurish Agni for the Petitioner that the Trial Court has, on two occasions, concluded that the Defendant Nos. 1 to 2(c) had unequivocally admitted the claim of the Plaintiff, both, whilst granting the application at Exhibit D-64, and on application at Exhibit D-70. In addition, the Trial Court had consistently rendered the finding that there was an admission by the Defendant Nos. 1 to 2(c) of the claim of the Plaintiff, and in addition, the application to withdraw these admissions filed by the Defendants at exhibit D-66 seeking to recall the admissions. It is his

further submission that the Trial Court, in terms of Order 12 Rule 6 (2) of CPC ought to have drawn a formal decree qua the Defendant Nos. 1 to 2(c) which it has refused to do.

6. Opposing these submissions, Mr. P. A. Kamat argues that the order on the review application at Exhibit D-17 partly allows the review, rendering the findings therein at paragraphs 9 and 10 that the application to take on record the Will requires to be heard before orders are passed on the application for a decree on admission, it has also held that the Court would have to also decide the application of the Plaintiffs at Exhibit 64, wherein they had renewed their request to pass a decree on admission. It is his further submission that it is always open to the Defendant Nos. 1 to 2(c) to challenge the decree passed by the Court finally, even where Defendant Nos. 3 to 11 are concerned and, therefore, the Defendant Nos. 1 to 2(c), until decree is passed, have a right to file written arguments.

7. From the record, there is absolutely no doubt that the Court, in at least two of its orders, i.e. order dated 30.09.2022, and later whilst allowing Exhibit 64 vide order dated 17.02.2023, has specifically held that there is a clear and unequivocal admission on the part of Defendant Nos. 1 to 2(c) of the claim of the Plaintiff. In its order of 17.02.2023 allowing the application under Order 12 Rule 6 (2) CPC, the Court specifically held that the affidavits filed by Defendant Nos. 1 to 2(c), which were sought to be withdrawn, have unequivocally

admitted the claim of the Plaintiffs and, therefore, the suit ought to be decreed. However, till date, no specific decree has been drawn up by the Court.

8. The Court has further gone on to hold, whilst disposing of an application at Exhibit D-82 on 15.05.2023, that it had already held in its order of 30.09.2022 that the suit should be decreed on admission and it need not decide the application at Exhibit D-82, which was already granted earlier. The Trial Court has also, in line with its earlier orders, refused permission to the Defendant Nos. 1 to 2(c) to cross examine the Plaintiff when evidence was led, since the evidence was led qua Defendant Nos. 3 to 11 against whom the suit proceeded ex parte.

9. In ***Rajiv Ghosh v. Satya Naryan Jaiswal***; **Special Leave Petition (Civil) No.9975 of 2025 (Diary No. 8323 of 2025)**, the Court considered the meaning of the words, “or otherwise” contained in Order XII concluding that after the amendment to Rule 6 of Order XII, admissions are not confined but are of general application. The following observations were made in this context in the Judgment:

“35. The words "or otherwise" are wide enough to include all cases of admissions made in the pleadings or de hors the pleadings. Under Rule 6, as originally enacted, it was held that the words "or otherwise" without the words "in writing" used in Rule 1 showed that a judgment could be given upon oral or verbal admission also. [See: Beeny, re, (1894) 1 Ch D 499] The Amendment Act of 1976,

however, made the position clear stating that such admissions may be "in the pleading or otherwise" and "whether orally or in writing". Thus, after the amendment in Rule 6, the admissions are not confined to Rule 1 or Rule 4 of Order 6, but are of general application. Such admissions may be express or implied (constructive); may be in writing or oral; or may be before the institution of the suit, after the suit is brought or during the pendency of proceedings.

36. A Division Bench of the Delhi High Court very correctly laid down the following interpretation of the provision of O. 12, R. 6, CPC, in the decision of *ITDC Limited v. Chander Pal Sood and Son*, reported in (2000) 84 DLT 337 (DB): (2000 AIHC 1990):

"Order 12, R. 6 of Code gives a very wide discretion to the Court. Under this rule the Court may at any stage of the suit either on the application of any party or of its own motion and without determination of any other question between the parties can make such order giving such judgment as it may think fit on the basis of admission of a fact made in the pleadings or otherwise whether orally or in writing."

37. The use of the expression 'otherwise' in the aforesaid context came to be interpreted by the High Court. Considering the expression the Court interpreted the said word by stating that it permits the Court to pass judgment on the basis of the statement made by the parties not only on the pleadings but also dehors the pleadings i.e. either in any document or even in the statement recorded in the Court. If one of the parties' statement is recorded under O. 10, Rr. 1 and 2 of the Code of Civil Procedure, the same is also a statement which elucidates matters in controversy. Any admission in such statement is relevant not only for the purpose of finding out the real dispute between the parties but also to ascertain as to whether or not any dispute or controversy exists between the parties. Admission if any is made by a party in the statement recorded, would be conclusive against him and the Court can proceed to pass judgment on the basis of the admission made therein.

38. Rule 6 of Order XII, before the amendment, allowed judgment on admission only on an application by a party. The Law Commission, however, suggested that a judgment may be pronounced either on an application by a party or even suo motu [See: *Throp (supra)*]"

10. Applying the ratio laid down in *Rajiv Ghosh* (supra) to the facts of this case, and on perusing the three affidavits filed by Defendant Nos.1, 2(a) to 2(c), the admission to the case of the Plaintiffs is clear, unambiguous and in fact, requests the Court to decree the suit. Consequently, a decree ought to have been drawn up by the Trial Court after having recorded such admission.

11. In the light of these findings, the Trial Court ought to have specifically drawn up a decree under Sub-Rule 2 of Rule 6 of Order 12 CPC and proceeded thereafter against the defendant Nos. 3 to 11. Till date, the Trial Court has not drawn up such a decree. As a consequence of its two earlier orders, where it has specifically held that Defendant Nos. 1 to 2(c) have unequivocally admitted the claim of the Plaintiff, the Trial Court is now directed to draw up a decree in terms of Order 12 against Defendant Nos. 1, 2, 2(a) and 2(c), within two weeks of the passing of this order.

12. If the Court had directed a decree on admission against Defendant Nos. 1 to 2(c), the impugned order dated 28.03.2025 is obviously erroneous. Once the Court had held that decree needs to be passed against Defendant Nos. 1 to 2(c), and after precluding those Defendants from cross examining the Plaintiffs, there was no question of allowing them to file written arguments. The written arguments would obviously not be taken on record and had to be discarded from the Court file. A decree ought to have been passed

way back in the year 2022 or at least immediately on 17.02.2023 when Exhibit 64 was allowed by the Court. The Trial Court has obviously failed to pass a decree in terms of Order 12 Rule 6 CPC, which it is mandated to do.

13. Consequently, the impugned order dated 28.03.2025 is quashed and set aside. Rule is made absolute in terms of prayer clauses (a) and (b) of the petition.

14. The Trial Court shall draw up a decree on admission in terms of Order 12 Rule 6 CPC against Defendant Nos. 1, 2, 2(a) and 2(c) within two weeks from the passing of this order. The Trial Court shall discard the written arguments of Defendant Nos. 1, 2, 2(a) and 2(c) from the file and shall proceed to decide the suit qua Defendant Nos. 3 to 11 on the basis of the evidence led by the Plaintiff against those Defendants. The suit may be disposed of preferably by 31.12.2025.

VALMIKI MENEZES, J.