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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.361 OF 2025

1. Mr. Prakash V. Khalap, Son of
Vaikunth Khalap, Indian National,
Aged about 76 years, Married,
Business, R/o H. No. 431/1 Waigan
Wado, Nachinola, Bardez, Goa.
403508

2. Mrs. Gulab Prakash Khalap, Wife of
Prakash V. Khalap, Indian National,
Aged about 68 years, married,
Housewife, R/o H. No. 431/1 Waigan
Wado, Nachinola, Bardez, Goa.
403508

... Petitioners.

Versus

Mr. Rawloo (Pradip) V. Khalap, Son of
Vaikunth Khalap, Indian National, Aged
about 73 years, Married, Business, R/o H.
No. 192, Carmarkhazan, Pedem, Mapusa,
Bardez, Goa. Presently residing at 9372,
FOLKSTONE CIR Huntington Beach, CA
92646 U. S. A.

... Respondent.

Mr. Neelesh Takkekar with Ms. Tanvi Naik, Advocates for the
Petitioner.

Mr. S. Karpe with Mr. Anand Shirodkar, Advocates for the
Respondent.

CORAM: VALMIKI MENEZES, J.

DATED: 16th September, 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 order impugned in this petition is dated 06.05.2025 passed by the Civil Judge Senior Division, Mapusa in Special Civil Suit No.27/2020/C, rejecting the application at Exhibit D-49. This application was filed by the Defendants opposing taking on record an affidavit in evidence which was marked Exhibit C-47, filed by a witness, who the Defendant claims was an Advocate who appeared for the Defendants and who had a privileged communication with the Defendants. The application basically challenges the competence of the witness as an Advocate to depose in the matter.
4. The Trial Court, whilst considering the application, unfortunately has proceeded on the erroneous assumption that the application was under Order 6 Rule 16 CPC, since it was styled in that fashion. It is trite law that the nomenclature of an application is irrelevant, and the Court has to deal with the substance of the application. In the present case, the application also invokes powers under Section 151 CPC and sought to object to the affidavit of the said witness being taken on record and evidence being led by the said

witness for reasons stated in the said application. These have not been addressed by the Trial Court and the application has been dismissed on a technicality that the provisions of Order 6 Rule 16 CPC apply to rejection of pleadings.

5. In that view of the matter, the impugned order cannot be sustained and is, therefore, quashed and set aside. The Trial Court shall now consider the application at Exhibit D-49 dated 04.05.2024 filed by the Defendants on its own merits and pass orders after considering the rival contentions of the parties of the same.

6. Rule is made absolute in the above terms.

7. All contentions of the parties are left open.

VALMIKI MENEZES, J.