



IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.60 OF 2025

1. Dhaku Madkaikar,
aged 52 years,
R/o. SaiDham Kari Bhat,
Adarsh Colony, Carambolim, Corlim IE,
North Goa, Tiswadi- Goa.

2. Bevin da Colaco,
aged 45 years,
R/o. 450/E, Dias Building,
Alto Gimaris, Rua de Natal,
Panaji- Goa.

...Petitioners

v/s.

1. State of Goa,
Through the Chief Secretary,
Secretariat Complex,
Porvorim- Goa

2. Collector,
North Goa District,
Panaji- Goa.

3. The Deputy Collector & SDO,
Panaji Sub Division,
Collectorate Building,
Panaji- Goa.

4. Mr. John F. Pereira,
Major of age,
R/o. New Lotus Company,
Plot No.13/801,
Near Apnalaya Club,
Govindi, Mumbai -400 043.

5. Ubaldina Pereira,
major in age,
R/o. Shirley, Peter Compound,
Opp. Rizvi (College of Hotel Management)
Bandra(W), Mumbai)

6. Ashok Govind Kunkalekar,
major in age
R/o. H.No.294, Saklembhat,
Carambolim, Goa.

...Respondents

Mr. Gaurish Agni, Advocate for the Petitioners.

Mr. Tukaram Gawas, Additional Government Advocate for
Respondent Nos.1 to 3.

Mr. Dhruv Dhawan, Advocate for Respondent No.4.

Mr. V. Joshi, Advocate for Respondent No.5.

CORAM:- VALMIKI MENEZES, J.

DATED :- 2nd April, 2025

ORAL JUDGMENT:

1. Heard learned Counsel for the parties.
2. Rule. Rule is made returnable forthwith with the consent of the parties.
3. In this Writ Petition filed under Section 227 of the Constitution of India, two orders passed by the Adhoc District Judge-III at Panaji in Civil Suit No.36 of 2011 have been challenged. The first order dated 10.05.2024, whereby the Civil Court has rejected an application for adjournment at the behest of Defendant No.4, where the ground for adjournment was that Defendant No.4 was unwell on the relevant date and unable to lead his evidence on that date. The grounds for rejection of the application were based

on the fact that Defendant No.4 produced a Medical Certificate to substantiate the adjournment sought by him.

4. The second order impugned in the petition is of 06.07.2024, whereby the District Court rejected the Petitioner's application dated 13.05.2024 at Exhibit D-130 seeking recall of its earlier order dated 10.05.2024, on the ground that the Defendant No.4 had tendered a copy of the Medical Certificate with the application, on the basis of which the earlier adjournment was sought. Consequent on the passing of the impugned orders, the trial Court has closed the evidence of Defendant No.4, 5 and 6, Defendant No.4 and 5 being the contesting defendants in the suit, and has set the matter down for final arguments.

5. There is no doubt that after going through the record, the Defendant Nos.4 and 5 have sought adjournments on four continuous dates i.e. on 06.12.2023, 14.12.2023, 18.01.2024 and 01.02.2024. These adjournments were sought to present an affidavit in evidence of the Defendant No.4. Further adjournment was sought on 22.03.2024 and it appears from the record that on 26.03.2024 and 08.04.2024, no specific application is referred to in the Roznama, the matter was adjourned in the absence of the Defendant No.4 by the Court on those dates. Consequently, on 06.12.2024 and 08.04.2024 and on various other dates, hearings

stood adjourned at the behest of the Defendant No.4. Though further note has to be taken of the fact that on all these dates adjournments were granted or the matter was adjourned at the behest of the Court.

6. The Roznama reveals that on 15.04.2024, Defendant No.4 was present in person and tendered his affidavit in evidence, a copy of which was furnished to the Plaintiff and the original copy of the affidavit was returned to be produced during his examination in chief which was then set down for 25.04.2024. On 25.04.2024 the Plaintiff sought an adjournment on the ground that their Advocate had a personal bereavement and the matter was adjourned to 10.05.2024, when the application for adjournment was filed by the Advocate for Defendant No.4 stating that the Defendant was unwell.

7. With the application for recall of order dated 10.05.2024 the Medical Certificate was annexed wherein Defendant No.4 is stated to have been suffering from diarrhea and Colic and was advised rest for two days w.e.f. 09.05.2024. The impugned order does not record that the contents of the Certificate are seriously doubted. The impugned order dated 06.07.2024 however rejects the application for recall of order dated 10.05.2024 on the sole ground that on previous occasions, Defendant No.4 had sought several adjournments and since, in terms of Order 17, had exhausted

opportunities provided for seeking adjournment, the Court passed an order using its power to refuse his application for recall of order dated 10.05.2024. While it is true that Defendant No.4 has been seeking further adjournments which are referred to in the preceding paragraphs, the fact remains that each of these adjournments has been granted by the Court on its own merits or for reasons which are recorded by the Court. Having granted adjournments, the Court ought to have addressed itself whether there was a genuine case made out for recall of its order dated 10.05.2024 and shall not have gone beyond those reasons. The only reason assigned for rejecting the application at Exh. E-130 for recall of order dated 10.05.2024 is the number of adjournments granted to the Defendant No.4 on previous occasions.

8. In my opinion this could not be a reason for refusing adjournment, as the Court ought to have considered whether the reasons for recall were genuine or not. The genuineness of the Medical Certificate produced, which is of 09.05.2024, a day before the date set down by the Court for recording the evidence of the Defendant No.4, cannot be doubted. The parties and the Court had not doubted its genuineness seriously and in that view of the matter, there was reason to recall the order of 10.05.2024, since otherwise serious prejudice would have been caused to Defendant No.4 and 5 who have presented a joint defence. This is a suit wherein the

Plaintiff is seeking a decree of declaration of his title. The suit was pending from 2011 till 2019 without any evidence being led by the Plaintiff. Thereafter Plaintiff has sought an amendment to the plaint which was granted and though no further evidence was led by the Plaintiff himself, the Plaintiff sought to examine Defendant No.5 as a witness, which order issuing summons for Defendant No.5 was ultimately recalled by the Court on 24.08.2023. An additional written statement was filed by Defendant Nos.4 and 5 after amendment of the plaint on 19.10.2023. Therefore, one needs to be mindful of all these events, which no doubt have led to the Court itself being put under pressure of the fact that the suit was pending for all these reasons since 2012.

9. Be that as it may, in my opinion this is a fit case to exercise supervisory jurisdiction of this Court under Article 227 of the Constitution of India and quash and set aside the impugned orders dated 06.07.2024 and 10.05.2024. Consequently, Defendant No.4 shall be allowed to lead evidence and on completion of his evidence and evidence of any other witness for Defendant Nos.4 and 5, the Court may give one opportunity to Defendant No.6, to lead evidence, notwithstanding the fact that Defendant No.6 was set ex-parte on earlier occasion. After the completion of the evidence of defence of Defendant No.4 an opportunity shall be given to Defendant No.5 to lead evidence and examine her witnesses.

10. Needless to state, that Defendant No.4 shall co-operate in every manner with the trial Court in completion of his evidence within three months from the date of this order. Considering the number of occasions on which the Defendant No.4 has sought adjournments in the past and the delay caused in the disposal of the suit due to the various adjournments sought, it would be appropriate that Defendant No.4 to pay to the Plaintiff costs of Rs.20,000/-(Rupees Twenty Thousand only) as a condition precedent before leading evidence.

11. For the reasons stated above, the impugned orders dated 10.05.2024 and 06.07.2024 are quashed and set aside and the Application dated 10.05.2024 and 13.05.2025 at Exh. E-130 are allowed.

12. In view of the observations made above Rule is made absolute in the above terms.

VALMIKI MENEZES, J.