



IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.3 OF 2025
WITH
MISC.CIVIL APPLICATION NO.181 OF 2025
IN
WRIT PETITION NO.3 OF 2025

1. Goa Star Properties
A partnership Firm,
Having office at H.no. 292/2,
Madhalawada, Arambol, Pernem, Goa
Through its Partner
Mr. P. Vincent Dias
Aged 63 years,
Resident of H.no. 19/1, Non Mon,
Vasco Da Gama, Goa.

2. Mr. P. Vincent Dias
Aged 63 years,
Resident of H.no. 19/1, Non Mon,
Vasco Da Gama, Goa.

..... Petitioners

V/s.

1. Anilrao Narayan Kerkar alias Babuli Kerkar
Major of age,
Resident of H.No. 124, Deulwada,
Keri, Pernem, Goa.

2. Shoba A. Kerkar
Major of age,
Resident of H.No. 124, Deulwada,
Keri, Pernem, Goa

3. Mr. Santosh Naik,
Major of age,
Resident of H. no. 292/2, Madhalawada,
Arambol, Pernem Taluka, Goa Respondents

Mr. Akhil Parrikar, Advocate for the Petitioners.

CORAM:- VALMIKI MENEZES, J.

DATED :- 9th October, 2025

ORAL JUDGMENT:

1. Heard learned Counsel for the parties.
2. Rule.
3. According to the affidavit of service, Respondent No.3 has been served through WhatsApp and the report of the Court, insofar as service through speed post AD is concerned, states that the packet has been returned unclaimed. Respondent Nos.1 and 2 have been served on previous occasions. Service on Respondent No.3 shall be treated as complete.
4. This petition impugns the order dated 21.11.2024 passed by the Civil Judge Junior Division, Pernem, in Regular Civil Suit

No.07/2017 whereby an application for recall of an order of the same date dismissing the suit for default has been rejected.

5. Going through the record, while it is true that the Petitioner has not been appearing in the suit for almost 10 occasions when the case was kept for final arguments after evidence was complete, what is required to be seen by the Court is whether there was a default on the part of the Plaintiff/Petitioner on the relevant date i.e. on 21.11.2024. What transpires from the record was that on that date as recorded by the Court, another Advocate requested the matter to be kept back on behalf of the Plaintiff's Advocate, which request was refused, and the matter was dismissed for default. On the very same date, when the Advocate for the Plaintiff appeared at around 4.20 pm and moved an application stating the reasons why he was delayed and requested for recall of the order of dismissal for default, the application came to be dismissed citing reasons that the Plaintiff had been negligent in pursuing the suit.

6. This Court, in *Sanjay Dagadappa Kapse v/s. State of Maharashtra and Ors* reported in 2009 SCC OnLine Bom 923 has considered a similar situation wherein it has been held that if an application is moved on the very same date when the dismissal for default has taken place, the Courts may recall order of dismissal for default and even on an oral application for restoration may restore

the proceeding to the stage at which dismissal took place. The judgment rendered in Sanjay Kapse(supra) applies in all force to the facts of the present case. One cannot look at the previous incidents of default but has to look at the circumstances on the date when the suit is dismissed for default, i.e. on 21.11.2021. There was sufficient cause made out in the written application of the Advocate for the recall of the order, and the Court ought to have exercised the jurisdiction vested in it to recall such order on the facts stated in the application. Refusal to recall the order would visit the petitioner with serious consequences, more so in the suit of a nature filed, which was for specific performance of a contract and a declaration of title to the suit property.

7. Consequently, both the impugned orders dated 21.11.2024 are quashed and set aside. Regular Civil Suit No.07/2017 is restored to the file of the Civil Judge Junior Division of Pernem, who shall now proceed to hear the final arguments in the matter and dispose of the suit preferably by 21.12.2025.

8. Rule is made absolute. The petition stands disposed of accordingly.

VALMIKI MENEZES, J.