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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.765 OF 2024

SHELDON FIDELIS D'SOUZA,
S/o Late Teofilo D'Souza,
Aged 37 Years, R/o Mathias Villa,
Near Holy Cross, Bambolim,
North Goa - 403202.

... Petitioner.

Versus

1. M/S ATLAS FISHERIES PVT. LTD.,
Having its registered office
behind Ornate Estate,
Bainguinim, House No.7/2,
Old Goa, Goa 403402.

2. MR. ESTEVAN D'SOUZA,
Major in Age, Indian National,
R/o E-13, La Citadel Colony,
Dona Paula, Goa.

3. MRS. ESTELLA D'SOUZA,
Major in Age, Indian National,
R/o E-13, La Citadel Colony,
Dona Paula, Goa.

4. MR. ERNEST ADOLF ANDREA
D'SOUZA,
Major in Age, Indian National,
R/o E-13, La Citadel Colony,
Dona Paula, Goa.

5. MR. PRAKASH PALKAR,
Major in Age, Indian National,

R/o Conno, Jesus of Nazareth,
Siridao, Goa.

6. MRS. ANGELINA GENOVEVA
GUADALUPE RODRIGUES,
W/o Late Teofilo D'Souza, Aged 59 Years,
R/o Mathias Villa, Near Holy Cross,
Bambolim Complex, North Goa – 403202.

7. MR. ISHAN MATHIAS D'SOUZA,
S/o Late Teofilo D'Souza, Aged 39 Years,
Mathias Villa, Near Holy Cross,
Bambolim Complex, North Goa – 403202.

8. MRS. CANNY CARMO COLACO,
W/o Mr. Canny Carmo Colaco,
Daughter-in-law of Late Teofilo D'Souza,
Aged 31 Years, R/o Mathias Villa,
Near Holy Cross, Bambolim Complex,
North Goa – 403202.

9. MRS. ASHNEHA RODRIGUES,
W/o Sheldon Fidelis D'Souza,
Daughter-in-law of Late
Teofilo D'Souza, Aged 32 Years,
R/o Mathias Villa, Near Holy Cross,
Bambolim Complex,
North Goa – 403202.

10. MR. RICHIE ROSWALD D'SOUZA,
S/o Late Teofilo D'Souza, Aged 29 Years,
R/o Mathias Villa, Near Holy Cross,
Bambolim Complex,
North Goa – 403202.

... Respondents.

Mr. Parag Rao with Mr. Shulin Singbal, Advocates for the
Petitioner.

Mr. Sudesh Usgaonkar, Senior Advocate with Ms. Annelise Fernandes, Advocate for Respondent Nos. 1 to 5.

CORAM: VALMIKI MENEZES, J.

DATED: 27th November, 2025

ORAL JUDGMENT:

1. Rule. Rule made returnable forthwith. With the consent of the parties, petition is disposed of finally.
2. This petition impugns order dated 02.07.2024 passed by the Civil Judge Senior Division at Panaji in Special Civil Suit No.8/2018/B rejecting an application at Exhibit D-35 to bring legal representatives of the sole deceased Plaintiff on record and holding the suit as having abated.
3. The Trial Court appears to have proceeded on the legal assumption that the entire suit was founded upon the Plaintiff claiming a right as a Director of the Defendant No.1 Company, and all the reliefs prayed for in the suit flowed from his claim of Directorship in that Company. On this basis, the Trial Court came to a conclusion that the legal representatives of the Plaintiff, who are his children, could not claim to be Directors of the Company and there was no heritable or transferable right to the progeny of the Plaintiff. The Trial Court has also held that since there was no Will or any document on which basis the Court could infer that the legal

representatives of the Plaintiff were beneficiaries of his rights, the application was rejected.

4. Heard learned Counsel for the parties.

5. On an examination of the plaint, it is clear that the Plaintiff has based his suit, primarily on the fact that as a shareholder of the Defendant No.1 Company, his 250 shares in the Company were fraudulently transferred by the Defendant No.2 into his own name. In the plaint, he alleges that the share transfer forms were fraudulently executed in favour of the Defendant No.2 thereby raising the shareholding of Defendant No.2, in addition to his own holding of 250 shares in the Defendant No.1 Company, to 500 shares after addition of the Plaintiff's shares.

6. From the averments in the plaint, it appears that the Defendant No.3 possesses 250 shares while one Inacio Fernandes (not a party to the suit) possessed 250 shares, which, according to the Plaintiff, were transferred to Defendant No.2 illegally, without notice to the Plaintiff and without affording the Plaintiff the exercise of his right of pre-emption. It is on the basis of this claim in the plaint that the reliefs have been sought.

7. There is no doubt that on the basis of the claim of being a shareholder in the Defendant No.1 Company, the Plaintiff could maintain the suit against the Defendants insofar as his shareholding

of 250 shares is concerned, which he alleges were transferred fraudulently. This essentially is the relief in prayer clause (a) of the suit.

8. Amongst the remaining reliefs, prayer clause (g) directly pertains to the claim of the Plaintiff to Directorship of the Company on the basis of his shareholding therein. Obviously, this relief is not heritable and the legal representatives could not succeed to this claim and the cause as far as this relief, must die with the Plaintiff. Prayer clause (g), therefore, of the plaint, cannot be granted and the legal representatives of the Plaintiff could not claim any right to a decree in terms of prayer clause (g).

9. However, the claim in the plaint is that the Plaintiff was illegally removed by letter dated 21.06.2010 from Directorship of the Company, and on that basis, certain sums have been claimed as remuneration as a Director which are found in relief clause (h). Merely because the legal representatives would not be entitled to Directorship, would not disentitle them, if they ultimately succeed in proving that the Plaintiff was illegally removed as a Director, to claim reliefs in prayer clause (i). For this purpose, since I propose to allow the application to bring legal representatives on record, the Trial Court would have to decide the issue, as to whether the Plaintiff was removed from the Directorship under letter dated 21.06.2010 illegally, based on which finding, the Court would then decide the

entitlement of the relief under prayer clause (i). This is obviously so, since remuneration due to a Director would be monies due to the estate of the deceased Plaintiff, to which the legal representatives would be entitled.

10. Insofar as the other reliefs are concerned, learned Senior Advocate Mr. Sudesh Usgaonkar submits that based on the pleadings in the plaint, the reliefs itself could not have been granted to the Plaintiff, were he alive. In short, he submits that the plaint ought to have been rejected qua the relief in prayer clauses (b) to (f) and, therefore, the application to bring the legal representatives on record, since the Plaintiff himself would not be entitled to this relief must be dismissed.

11. In my opinion, these contentions would have to be dealt with by the Trial Court in an application under Order 7 Rule 11, which, if filed by the Defendants, would have to be dealt with on its own merits. On the face of the plaint, however, this would not disentitle the legal representatives to claim the reliefs based upon the averments made in the plaint as they stand.

12. Under these circumstances, the impugned order necessarily must be quashed and set aside. The application to bring on record the legal representatives of the deceased Plaintiff at Exhibit D-35 is allowed, but shall be restricted to the children of the deceased Plaintiff i.e. the Petitioner, Respondent No.7 Ishan Mathias D'Souza

and Respondent No.10 Richie Roswald D'Souza. The wife of the deceased, as moiety would have no right to divide such shares of the Defendant No.1, but may have a right to the value to the extent of her moiety share. Consequently, Special Civil Suit No.8/2018/B stands restored to the file of the Civil Judge Senior Division, Panaji, who shall now deal with the same in accordance with law.

13. Rule is made absolute in terms of prayer clause (a) which is restricted to the children of the deceased Plaintiff, i.e. the Petitioner, Respondent No.7 Ishan Mathias D'Souza and Respondent No.10 Richie Roswald D'Souza. No costs.

VALMIKI MENEZES, J.