



Meena

IN THE HIGH COURT OF BOMBAY AT GOA
CIVIL REVISION APPLICATION NO.13 OF 2025

VICTOR SANTAN D CUNHA(SINCE
DECEASED), THR. LR'S

... APPLICANTS

Versus

FRANCIS MANUEL D CUNHA

... RESPONDENT

Mr. Valerian D'Cunha, Petitioner No.1(b) in person.

Mr. Sagar Sarmalkar, Advocate for the Respondent.

CORAM:- VALMIKI MENEZES, J.

DATED :- 24th April, 2026

P.C.:

1. The applicant is present in person. This is a Revision Application filed against on order dated 19.04.2025, by which the Civil Court has rejected the Applicant's application for review of a judgment and decree dated 03.05.2018 passed in Regular Civil Suit No.178/2009/D before the Civil Judge Senior Division, Mapusa. The main ground on which the application for review was rejected is that there is an unexplained delay of 6 years and 52 days in filing the Review Application, since the suit was disposed of on 03.05.2018, whilst the application for review was filed on 24.04.2024 (Civil Review Application No. 01/2024/D).

2. On perusal of the record, the following facts are established, which throw light on the conduct of the review applicant before the trial Court.

The applicant initially filed Special Civil Suit No. 14/2006, challenging a final order dated 16.12.2004 in Inventory Proceeding No.171/2001/C. According to the Applicant, who was the Plaintiff in that suit, the final orders in the inventory proceedings were obtained fraudulently. Whilst that suit was pending, the Applicant filed a second suit which bears No. RCS 178/2009/D from which the present review order arises, in which he has challenged a Gift Deed dated 03.06.1994, on the ground that the same was executed by fraud and that the Gift Deed gifts properties, beyond the disposable quota. That suit came to be disposed of by Decree dated 03.05.2018, which has not been assailed further in appeal, and has attained finality.

3. In the meantime, the Defendant No.1 stepped into the witness box as witness No.DW1 in SCS No.14/2006 and deposed in the matter. The deposition commenced on 14.11.2017 and was completed on 14.11.2019. This deposition was therefore being recorded whilst RCS No.178/09/D was still not disposed of; however, the deposition of DW1 was completed immediately after RCS No.178/2009/D was disposed of.

The Review Application to seek the setting aside of the decree

dated 02.05.2018 in RCS No. 178/2009/D has been filed partly on the premise that the Applicant has come into possession of the deposition of DW1, i.e. Defendant No.1 in SCS No.14/2006, which, if considered, would result in the setting aside of the decree dated 03.05.2018. Thus, the grounds taken under Order 47 CPC are that the review is premised on new material. However, no justification has been offered by the Applicant, who was party to SCS No.14/2006, as to why there is a delay of 6 years and 52 days, despite having knowledge of the pendency of the suits in which he is a party plaintiff.

4. The trial Court has dismissed the review application mainly on the ground that no material has been placed on record, or even an application for condonation of delay has been sought to condone the delay of 6 years and 52 days in filing the review application. If one peruses the application for review, there is absolutely no reason or justification for a delay of 6 years and 52 days for filing the review.

5. During the course of the arguments, the party in person/Applicant submitted that an application for condonation dated 24.04.2024 was in fact filed by him before the trial Court. He has produced a copy of the same before me. The learned Advocate for the Respondents disputes this position on the basis of the instructions received by the Advocate appearing for the Defendants, that no such application was actually before the Court. Nevertheless, I have perused the application now placed before me and taken note of the fact that it is not supported by

an affidavit, nor, on perusal of the entire application, is there any fact pleaded to state the circumstances under which and justified the filing of the review application after 6 years and 52 days of delay. The application has three paragraphs in which the first two paragraphs only refer to the proceedings in the suit. Paragraph 2 states that the Applicant has filed the application with a delay because of the inaction and omission of his Counsel. There is no attempt made, by necessary averments in the application, to set and justify why 6 years and 52 days were taken by the Applicant to file the application, when he was a party Plaintiff to Special Civil Suit No.14/2006, in which he seeks to produce deposition of witness DW1.

6. Considering all these facts which are borne from the record, there is no cause for interference with the impugned order dated 19.04.2025.

7, The Application is rejected. No costs.

VALMIKI MENEZES, J.