



IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.111 OF 2026

Joaquim Francis Fernandes, son of
Mr. Andre Fernandes, aged about
51 years, married, Businessman,
Residing at Bondir, Santa Cruz,
Ilhas, Goa, Proprietor of M/s. Space
Esthetics, , having office at F-4, 1st
Floor, Building A-1, Jairam
Complex, Neugi Nagar, Panaji, Goa.
(Original Plaintiff)

.....Petitioner.

Versus

1. Siddhant Dayanand Naik, Son of
Dayanand Kesar Naik, Aged
about 33 years, married, in
service, Residing at Flat S-2,
Second Floor, Building B,
"Aashirwad Green", Ponguirvol,
Pontemol, Curchorem, Goa.
(Original Defendant No. 1)

...Respondent No.1.

2. Bharati Naraba Raikar, alias
Diksha Dayanand Naik, Wife of
Dayanand Kesar Naik, Aged
about 65 years, married,
Residing at H.No. 22,
Kasabwada, Netorlim,
Sanguem, South Goa.
(Original Defendant No. 2)

...Respondent No.2.

Mr. Rohit Bras de Sa, Advocate for the Petitioner.

Mr. Parag Wagle, Advocate for the Respondents.

CORAM: VALMIKI MENEZES, J.

DATED: 12th FEBRUARY, 2026.

ORAL JUDGMENT:

1. Registry to waive office objections and register the matter.
2. Rule. Rule is made returnable forthwith.
3. The Petitioner impugns Order dated 28.11.2025 by which the Court of the Senior Civil Judge at Quepem, dealing with Special Civil Suit No.5/2020/A, has dismissed an application at Exhibit D-21 of its record, filed by the Plaintiff for recall of Order dated 23.01.2025, closing the Plaintiff's evidence.
4. In substance, the reasons stated in the application for seeking recall of the Order of 23.01.2025 closing the Plaintiff's evidence was that after the Court had granted final opportunity to the Plaintiff on 10.10.2025 to lead evidence on the next date of hearing, which was 26.11.2025, on that date, since the Court was not in session (since the Judge was on leave), the Advocate for the Plaintiff failed to note the next date of hearing which was 23.01.2025. The evidence was closed on 23.01.2025, owing to the fact that neither the Plaintiff nor his Advocate was present on that date.

5. Whilst it is true that there is no affidavit of the Advocate supporting the application, nor, as noted by the trial Court, an extract of his diary placed before the Court, the application is supported by the affidavit of the Plaintiff himself. From the record it transpires that that after the Plaintiff's evidence was closed on 23.01.2025, the matter was listed on 27.02.2025 on which date, the Presiding Officer was on leave and thereafter on 01.04.2025, when the Defendants sought time to lead evidence. On the next date of hearing, i.e. on 26.06.2025, the Plaintiff filed his application for recall of Order dated 23.01.2025. This is not the case where prior to 23.01.2025, the Plaintiff was not appearing. Prior to that date the Plaintiff too appeared and has sought time on numerous occasions to lead evidence who was granted adjournment on the basis of the reasons assigned. It is also matter of record that costs had also been imposed on the Plaintiff on previous occasion. That reason by itself would not be enough to dismiss the application of the Plaintiff since the application has, in some detail, specified the reason that the dates were missed by the Plaintiff and his Advocate and the application is supported by an affidavit.

6. When rejecting an application, the trial Court ought to specify the reason on the basis of which the affidavit should be dismissed. Merely

because an extract of the diary is not annexed or affidavit of the lawyer not filed, would not be a reason enough to reject the application, when the application itself refers to the lawyer's absence and the lawyer's inadvertence as the main reason for not attending the matter on 23.01.2025.

6. For all these reasons, I deem it appropriate to quash and set aside the impugned Order dated 28.11.2025 and to allow the application at Exhibit D-21 dated 26.06.2025 filed by the Plaintiff for recall of Order dated 23.01.2025. Accordingly, the Order dated 23.01.2025 closing the Plaintiff's evidence is quashed and set aside. However, considering that more than one year has elapsed from the date that the Plaintiff's evidence was closed, some costs will have to be imposed on the Plaintiff to compensate the Defendants for the delay. I deem it appropriate that the Plaintiff deposits with the trial Court or directly pay to the Defendants or their Advocate, costs of Rs.15,000/- as a condition precedent for allowing them to lead their evidence.

If such costs are deposited or paid by the next date of hearing, which is 27.02.2026, the Plaintiffs shall lead their evidence on 27.02.2026 or any other adjourned date of hearing as may be convenient

to the trial Court. The Plaintiffs shall complete their evidence as expeditiously as possible and in any event, within three months of the next date of hearing. Mr. Wagle, learned Advocate for the Respondents submits that the Defendants have only one witness to examine. Considering this position, the trial Court may endeavor to dispose of this Suit by 31.12.2026.

7. Rule is made absolute in terms of prayer clause (a) subject to payment of costs as aforementioned.

VALMIKI MENEZES, J.