



IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.123 OF 2026

Prabhakar Ashroba Dhage, Son of
Ashroba Dhage, Aged 54 years,
Journalist, Married, Indian
National presently R/o D-2-D, D
type, Govt. Quarters, Altinho,
Panaji-Goa

.....Petitioner.

V/s.

1. Bhoju Gawas, Son of Deu Gawas,
Indian National, Service, Aged 26,
R/o H.N.236, ward 24, Near All
India Radio, Altinho, Panaji-Goa

...Respondent/Decree
Holder

2. Mr. Aurito Francisco Mendes
alias Honorato Aurito Mendes, Son
of late Francisco Mendes, Indian
National, Businessman, Aged 40,
R/o H.No.772, St. Agostinho
Waddo, St. Cruz, Ilhas -Goa

...Respondent/Judgment
Debtor.

Mr. Vallabh D. Pangam, Advocate for the Petitioner.

CORAM: VALMIKI MENEZES, J.

DATED: 17th FEBRUARY, 2026.

ORAL JUDGMENT:

1. Registry to waive office objections and register the matter.

2. Rule. Rule is made returnable forthwith.
3. Learned Advocate for the Petitioner submits that a notice has been served on the Advocate appearing for Respondent No.1 before the trial Court. In addition, the tracking report has been placed on record that at two different places, at the suit property and the original address shown in the cause-title before the trial Court. The tracking report suggests that the Respondent No.1 has been served with the notice.
4. The Order assailed in this Petition is an Order dated 20.09.2025 by which the application of the Petitioner for placing an affidavit in lieu of evidence on record, in an inquiry conducted under Rule 99 Order 21 CPC has been rejected.
5. In a suit for specific performance, the decreeholder in Regular Execution Application No.9/2014/C before the Civil Judge Junior Division at Panaji was granted a decree whereby the Plaintiff was required to deposit an amount of Rs. 6,50,000/- in favour of the Judgment Debtor/owner of the suit flat, and a Sale Deed was to be executed in favour of the decreeholder. The decree was passed on 21.12.2013 and this decree was sought to be executed; in the execution proceedings the present Petitioner filed objections under Section 47 CPC

claiming to have purchased the suit flat by Sale Deed dated 13.06.2015, which was executed by the Judgement Debtor after the passing of the decree. The Executing Court allowed the Petitioner to lead evidence in an inquiry, in the course of which the Petitioner mistakenly did not lead his evidence by filing an affidavit in lieu of evidence to step into the witness box and produce his documents which came to be exhibited, after which cross-examination is completed. The Petitioner claims, that it was only after completion of his evidence that he realised that he had not filed an affidavit in lieu of recording evidence to substantiate his claim in his objections to the decree. It is at this time that the application for producing the affidavit came to be filed which is rejected by the impugned Order.

6. No doubt, the provisions of the Evidence Act would require the examination in chief to be followed by cross-examination and re-examination, but the fact remains that in this matter, instead of recording the evidence-in-chief of the Petitioner, the Court has only permitted the Petitioner to produce documents. This is evident from the examination of the Petitioner recorded on 16.03.2024, where there is no actual examination-in-chief recorded by the Court, but only the production of documents which have been exhibited. This itself was an irregular

procedure followed by the Executing Court when it ought to have directed the Plaintiff to record examination-in-chief or to file an affidavit in lieu of examination-in-chief. Neither of these procedures were followed by the Executing Court. In this view of the matter, though documents were produced in chief, and cross-examination has taken place on the documents produced by the Petitioner, it was incumbent upon the Executing Court to record the evidence of the Petitioner or in lieu of recording the evidence to call upon the Petitioner to file an affidavit in lieu of evidence. For not following this procedure, the impugned Order would have to be quashed and set aside and the Petitioner be permitted to file his affidavit in evidence, in lieu of the chief to be recorded.

7. Accordingly, the impugned Order dated 20.09.2025 stands quashed and set aside and Rule is made absolute in terms of prayer clause (a) of the Petition. The Executing Court shall take on record the affidavit dated 11.07.2025 and exhibit the same after putting the Petitioner in the witness box and administering oath. No further documents shall be produced by the Petitioner, and the Respondent/Decree holders shall be permitted to cross-examine the Petitioner and thereafter, Orders be passed on the Petitioner's objections to the decree.

8. Considering that the Petitioner has taken considerable time of the Executing Court and of the Decree holder, and the proceedings in Execution Proceedings have been delayed by almost six months, as a condition precedent, for leading evidence for filing affidavit in lieu of evidence before the Executing Court, the Petitioner shall deposit costs of Rs.5,000/- with the Secretary of the North Goa District Legal Services Authority and an additional costs of Rs.5,000/- with the decree holder in the Execution Proceedings.

9. A copy of this Order shall be placed before the Executing Court, which has listed the Execution Proceedings on 18.02.2026.

VALMIKI MENEZES, J.