

IN THE HIGH COURT OF BOMBAY AT GOA.

CIVIL REVISION APPLICATION NO. 11 OF 2002.

Fabrica of Church of St. Andre,  
Vasco da Gama, Goa, represented  
by its constituted Attorney Mr.  
Franco Saldanha, resident of  
3/4 Housing Board Colony,  
Baina Desterro, Vasco da Gama,  
Goa.

... Applicant.

Versus

Mrs. Maria Liberata Telles,  
widow of Claudio Telles,  
resident of Non Mon, Saibinnichem  
Bhatt, Vasco da Gama, Goa.

... Respondent.

Mr. S. Fernandes, Advocate for the Applicant.

Miss Pooja Salgaonkar, Advocate for the Respondent.

Coram: P.V. HARDAS, J.

Date: 21st June 2002.

ORAL ORDER.

Notice was issued to the respondent for final disposal of this revision at the stage of admission. Accordingly, Advocate Pooja Salgaonkar was present before the Court on 6th June 2002. Thereafter the matter was on board on 20th June 2002. However, the counsel for the respondent was absent when the matter was called and, accordingly, this revision was fixed today, 21st June 2002. Today also the counsel for the respondent was absent when the matter was called. This revision is, therefore, taken up for final disposal at the stage of admission in pursuance to the notice issued by this Court. However, Miss Pooja Salgaonkar, the learned counsel appearing for the respondent, on 6th

June 2002 had stated that the present respondent had given no objection to the application of the present applicant filed in the trial Court.

2. The facts necessary for the decision of this revision are set out hereunder:-

The present applicant/original plaintiff, while examining P.W.1 sought to refresh the memory of the witness by allowing the said witness to refer to the document. The learned trial Court declined to permit the witness to refresh his memory on the ground that Sections 159 and 160 of the Evidence Act are applicable only to criminal trials and not to civil proceedings. The plaintiff, therefore, filed Civil Miscellaneous Application No. 108/2001/C for reviewing the Order of the learned trial Court. The learned trial Court by its Order dated 16th October 2001 dismissed the review application on the ground that the authority cited by the learned counsel for the plaintiff pertains to proceedings under the Representative of People's Act and not in connection with civil proceedings.

3. It is needless to dilate on the controversy any further but sufficient to hold that Sections 159 and 160 of the Indian Evidence Act in their application cannot be restricted to criminal trials. Sections 159

and 160 of the Indian Evidence Act permit the witness while under examination to refresh his memory by referring to any writing made by himself at the time of the transaction or soon afterwards. The Order of the learned trial Court restricting the scope of Sections 159 and 160 of the Indian Evidence Act to criminal trials is wholly unwarranted and is without any basis. The Order impugned in the present revision deserves to be quashed and set aside.

4. In the result, therefore, Civil Revision Application is allowed and the impugned Order is quashed and set aside. The plaintiff's witness P.W.1 is allowed to refresh his memory by perusing the documents. The trial to proceed according to law.

P.V. HARDAS, J.

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