

IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL REVISION APPLICATION NO.20 OF 2002

Barabhumi Education Society,  
a duly registered society  
under the Society's Registratio  
Act 1860, with registered  
office at Tambdi Surla,  
(through its President  
Shri Anand Rajaram Dessai,  
r/o Sancordem,  
Sanguem, Goa

... APPLICANT

versus

1. Shri Krishna Moreshwar  
Joshi, major of age,  
r/o Gawane, Sattari, Goa;
2. Shri Sitaram V. Kamat,  
major of age, r/o  
Bolcornem, Sancorda,  
Sanguem, Goa;
3. Shri Babaji G. Dessai,  
major of age, r/o  
Madhlawada, Sancorda,  
Sanguem, Goa;
4. Shri Sukdow A. Gaonkar,  
major of age, servie,  
r/o Dhargem, Sancorda, Goa;
5. Shri Vithal M. Gaonkar,  
major of age, service,  
r/o Tambdi Surla,  
Sancordem, Sanguem, Goa;
6. Shri Digamber V. Joshi,  
major of age, agricul-  
turst, r/o Gawane,  
Sattari, Goa;
7. Shri Shivaji G. Dessai,  
major of age, service,  
r/o Madhlawada,  
Sancordem, Goa;
8. Shri Daji Dessai,  
major of age,  
Madhlawada,  
Sancordem, Goa;
9. Shri Bhau Dessai,  
major of age, service,

r/o Madhlawada,  
Sancordem, Goa;

10. Shri Madhavarao Dessai,  
major of age, business,  
r/o Surla, Sancordem, Goa;

11. Shri Prakash Dessai,  
major of age, business,  
r/o Surla, Sancordem, Goa;

12. Shri Sadashiv Fatti Dessai,  
major of age, business,  
Malpan, Sattari, Goa;

13. Shri Govind V. Sawant,  
major of age, business,  
r/o Surla, Sancordem, Goa;

14. Shri Tushidas Laad,  
major of age, business,  
r/o Bolcornem,  
Sancordem, Goa

...RESPONDENTS.

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Shri S.N. Joshi, Advocate for the Applicant.

Shri C.A. Coutinho, Advocate for the Respondents,  
except Respondent No.5.

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**CORAM : A.S. AGUIAR, J.**

DATED : FEBRUARY 28, 2002.

ORAL ORDER

Heard the learned Advocates.

2. In this Civil Revision Application, the Applicant seeks quashing of the impugned Order dated 13-9-2001, whereby the objection of the learned Advocate for the Respondents to question in cross-examination put by the learned Advocate for the Applicant, is allowed and whereby the

Applicant was prevented from cross-examining the Respondent on the question, namely, "On what basis did you list the items mentioned in the Application for injunction moved by the Defendants are with the plaintiffs represented by Anand R. Dessai ?"

3. The said Order is impugned on the ground that the question, put in cross-examination of the Respondents' witness and disallowed is vital to the defence of the Applicant and the impugned Order has caused prejudice to the Applicant's case.

4. The learned Advocate on behalf of the Respondents, however, contends that the impugned Order is nothing but a reiteration of the earlier Order dated 10th December, 1997 where objection to a similar question put by the Advocate for the Applicant in cross-examination of the Respondents' witness, was allowed. The Order passed in Civil Miscellaneous Application No.180 of 1994 in the said Special Civil Suit No.79/94/A is in connection with the question put in cross-examination which is as follows:-

"Did you obtain any  
permission from the

Education Department or  
any other authority to  
shift the furniture and  
other articles belonging  
to the Plaintiff from the  
premises wherein the  
School was running on  
6.6.1994 ?"

5. The objection to the question was allowed on the ground that the Plaintiff could not go back to the plaint saying that the articles were already taken on 6.6.1994, i.e. prior to the date of the Order, since the Court was fully satisfied on 31-8-1994 that those articles are with the President Shri Anand Dessai, the present Applicant, and hence had directed him to hand over those articles to the Defendants. The learned Judge in the said Order further held that "if the Plaintiff in this Contempt Application is allowed to cross-examine on the alleged incident of 6.6.1994, then it will amount to re-opening of the case and then the Order dated 31-8-1994 will have no meaning." The impugned Order dated 13th September, 2001 allowing the objection of the Advocate for the Respondents is to the question :

"On what basis did you list the items mentioned in the Application for injunction moved by the Defendants are with the plaintiffs represented by Anand R. Dessai ?" Clearly, the two questions are not the same albeit the cross-examination pertains to the same point, namely, "Whether the other articles which were directed to be returned to the Respondents were with the Applicant?" Clearly, the orders of the trial Judge are not sustainable. The Order dated 31st August 1994 is passed on the basis of prima facie evidence in the form of averments in the Affidavits. No documentary evidence or any other conclusive evidence was brought on record to show what items or furniture were in possession of the Applicant on the date of the passing of the said Order dated 31-8-1994.

6. The Applicant in the present Application is facing contempt proceedings. It is vital to his defence that he should be allowed to cross-examine the witnesses to establish that these items which were directed to be handed over to the Respondents were not with the Applicant at the time of the trial and therefore he is not guilty of contempt. The reasoning of the learned trial Judge upholding the objections to the questions put in the cross-examination is

fallacious. The questions ought to have been allowed. Hence I allow the Revision Application and set aside the impugned Order dated 13th September, 2001. The learned trial Judge is directed to permit the cross-examination of the Respondents' witnesses to enable the Applicant to effectively defend himself in the contempt proceedings.

7. Application stands disposed of.

( A.S. AGUIAR )  
JUDGE.

ac.