

IN THE HIGH COURT OF BOMBAY AT GOA

MISC.CIVIL APPLICATION NO. 7 OF 2011

IN

WRIT PETITION NO. 421 OF 2009

MR. JOSEPH D'COSTA AND ANR., ... Applicants
Versus
MR. STEPHEN RODRIGUES ... Respondent

Mr. Galileo Teles, Advocate for the applicants.
Mr. J. J. Mulgaonkar, Advocate for the respondent.

Coram:- A. P. LAVANDE, J.

Date:- 31st March, 2011

P.C.

Heard Mr. Teles, learned Counsel for the applicants and Mr. Mulgaonkar, learned Counsel for the respondent.

2. This is an application for recall of the order dated 6th January, 2010 by which a conditional order was passed pursuant to which Writ Petition no.421/2009 was dismissed.

3. According to Mr. Mulgaonkar, learned Counsel for the respondent, the application for setting aside the said order which in substance means restoration of Writ Petition No.421/2009, has not been filed within a period of limitation and in any case no sufficient cause is mentioned by the petitioners in the application. Mr. Mulgaonkar, learned Counsel opposed the application on the ground that Writ Petition itself is not maintainable against the impugned order since remedy by way of appeal is available to the petitioners.

4. Mr. Teles, learned Counsel for the applicants fairly conceded

that against the impugned order, remedy by way of appeal is available and as such, the applicants desire to avail of the said remedy. However, he submitted that Writ Petition No.421/2009 be restored by recalling the order dated 6th January, 2010 and thereafter, leave be granted to the applicants to withdraw Writ Petition No.421/2009.

5. Since against the impugned order Writ Petition is not maintainable, no purpose will be served in restoring Writ Petition. As such, I am of the considered opinion that no purpose will be served in allowing the application. Accordingly, the application is dismissed. Needless to mention that dismissal of the application and Writ Petition, which was dismissed for non-compliance of the order, would not come in the way of the applicants/ petitioners from availing of appropriate remedy as may be available in law.

6. The application stands disposed of accordingly.

A. P. LAVANDE, J.

SMA