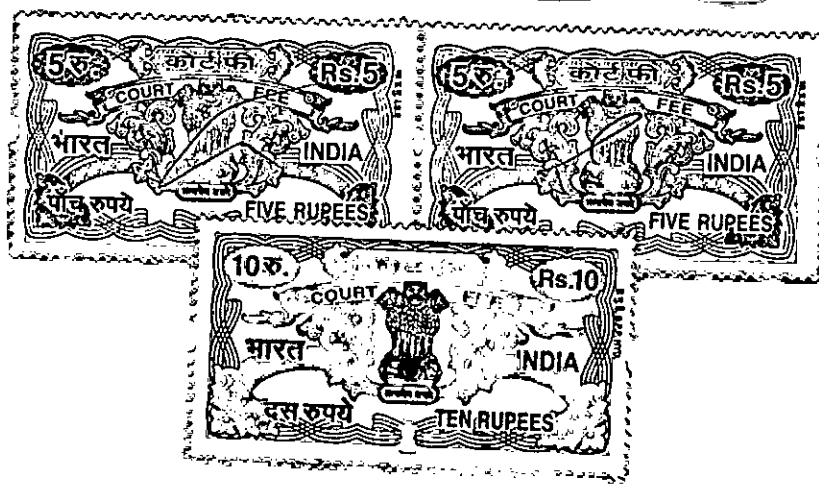
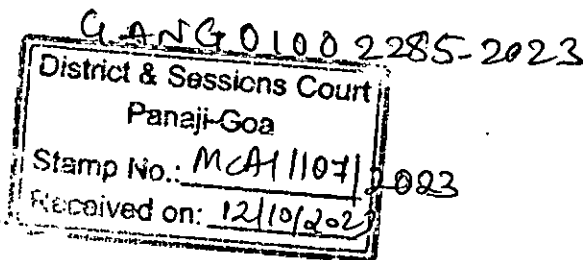




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Examined and Registered on Misc. Civil  
Panaji. Appeal No. 100/2023  
Dated: 18/10/2023.

JoS  
Asst. Sheristadar



IN THE COURT OF DISTRICT AND SESSION JUDGE AT  
PANAJI GOA

Miscellaneous Civil Appeal no. 100 /2023

Mrs. Lilawati J. Shirodkar

Widow of late Mr. Janardhan Shirodkar

70 years of age,



LHTT

Resident of H.no 1193 Kannaikwada

Morjim Pernem Goa...Appellant/original defendant

V/s.

Shri Sunil Madhusudhan Prabhu Desai

@Sunil Madhusudhan Prabhu Parsekar

Desai @Sunil Madussudana Porobo Parxencar

Dessai, son of late Madhusudhan Jairam Prabhu Desai,

55years of age approximately, resident

of 275 Bamanwada Parsem

Pernem Goa. .... Respondent/original Plaintiff

APPEAL UNDER ORDER XLIII RULE 1® OF C.P.C. R/W  
SECTION 104 (I)H OF CPC AGAINST AN ORDER DATED  
24/11/2022 PASSED BY THE COURT OF CIVIL JUDGE  
JUNIOR DIVISION PERNEM GOA IN CIVIL MISC.  
APPLICATION NO. 11/2016 BASED ON ORDER PASSED

HOLDING THE APPELLANT HAVING DISOBEYED THE  
COURT ORDER IN REGULAR CIVIL SUIT NO. 9/2010 BY  
CIVIL JUDGE JUNIOR DIVISION OF PERNEM.

**MAY IT PLEASE YOUR HONOUR;**

The Appellant state and submits as under:-

1. That the Appellant was the original Defendant and the Respondent was the original plaintiff in Civil Misc. Application no. 11/2016 in Regular Civil Suit no. 9/2010.
2. That the Respondent/ Original Plaintiff had filed a suit for Permanent Injunction and Mandatory Injunction along with Temporary Injunction Application.
3. In short, it is case of the Respondent/ Original Plaintiff is that the Appellant/Original Defendant are carrying out construction in the property bearing survey no.116/1 of village Morjim Pernem Goa wherein the Respondent is the Co-owner of the said Property.



L.H.T.P

4. That it is case of the Respondent/ Original Plaintiff is that the defendant was asked to show the licenses ,proposed plan for the said construction if any sanctioned from the PWD, or Town and country Planning , conversion Sanad obtained from the Deputy Collector wherein it was informed that by the Appellant/Original Defendant that she do not have any permission/licenses from the concerned authorities.

5. It is further the case of the Plaintiff/respondent herein that Appellant/Plaintiff had constructed a new house adjacent to its original house in spite of not having any licenses or any required documents for the said illegal construction.

6. It is the case of the Respondent that despite of giving warning to the Appellant, the Appellant continued with the alleged illegal construction, the Respondent accordingly lodge a complaint before the Village Panchayat of Morjim on 17/12/2009 to take action against the Appellant.

  
L.H.T.D



7. That the said Respondent filed an application for Temporary Injunction, wherein the Defendant /Appellant have filed her reply on the said application and the said application was allowed on 22/4/2010.

8. That the Defendant/Appellant have filed its written statement denying the claims of the Original Plaintiff/Respondent.

9. It is the case of the Original Defendant/Appellant herein that the said house is an old Mundkarial house of the defendant /Appellant and that the said repair/renovation of the said Mundkarial house was done within the Mundkarial area which fact was known to the Original Plaintiff/Respondent herein .It is further the case of the Defendant that the Appellant being the Mundkar of the house bearing no.1193 situated in the



L. H. T. P.

property bearing survey no.116/1 of Morjim Pernem Goa. It is the case of the appellant that the Appellant is the Mundkar of the said house and is the Tenant of the rest of the suit property.

10. It is further the case of the Original Defendant/Appellant that there is no new construction done in the said suit property but it was just a repair/renovation of the mundkarial house within the mundkarial area so there was no question of obtaining sanad from the Deputy collector of Pernem.

11. That the Original Defendant/Appellant had filed an application to refer the said issue of mundkar and Tenant, which was referred to the Mamlatdar Court in the interest of justice.

12. That the Original Plaintiff/Respondent have thereafter filed a Contempt application bearing no.11/2016 dated 28/4/2016, falsely claiming that



Original Defendant/Appellant have demolished apart of her house and had commenced the construction work in the suit property on 24/4/2016. It was also falsely claimed that the Original Defendant/Appellant is also extending her house further and is preparing to complete the same in hurry. However there is no independent evidence produced supporting the application.



13. That the Original Defendant/Appellant herein has filed her reply on 27/6/2016 denying all the allegations made by the Original Plaintiff/Respondent against the Original Defendant/Appellant who being a widow and a senior citizen who knows the importance of the Court Order so the question of disobeying the same does not arise. That it was further the case of the appellant, that the Original Plaintiff/Respondent is only trying to harass the Appellant to achieve its illegal goals. It was the contention of the Appellants that the photographs

L.H.T.I

annexed to the said contempt application are not of the same house .

14. That after taking into consideration the said application, the reply filed by the Appellant/original Defendant and based on the arguments advanced , this Hon'ble Court was pleased to allow the said Contempt application on 5/12/2019.

15. That the said order dated 5/12/2019 was passed by this Hon'ble Court without taking into consideration the merits of the case. That the said order dated 05/12/2019 was passed without relying upon any independent evidence to prove the allegation of disobedience of the court order by the appellant. The photograph produced are not supported with independent witness nor any affidavit under section 65B of Indian evidence act was produced nor any report was produced supporting the



LHTD



photograph to prove that he same was of the suit house that is too after passing of the injunction order nor any evidence was produced to show that the injunction order was communicated and was explained soon after passing of the Court order. It is important to note that the appellant was given a free legal aid lawyer. Appellant was neither given an opportunity to lead evidence on their behalf for supporting its contention and hence this order passed for allowing the said contempt application/ application for disobedience of the court order, amounts to bad in law and hence liable to be set aside.

16. That after allowing the said Contempt Application on 5/2/2019, the Hon'ble Court had issued show cause notice to the Appellant/Original Defendant under Order 39 Rule 2A read with 11 of C.P.C. to do good the default or mend the default and to show why the Appellants defence should not be strike off or why her property should not be attached.



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17. That upon receipt of the said show cause notice, the Appellant/Original Defendant had appeared before the Court and filed her reply where in it was stated that she has not done any contempt of Order of the Court and that the Order dated 05.12.2019 passed by this Honble Court is an ex-parte order. That the Appellant/Original Defendant being an illiterate senior citizen is not aware of the procedure of law and that if the defence is strike out then the great loss and prejudice shall be caused to the Appellant and her right will be deprived as a Mundkar.

18. That without taking into consideration the fact and circumstances of the said application for striking off the defence of the Appellant, the Id. Trial court has erroneously and contrary to the law, allowed the same on 24/11/2022 based on the bad order passed on the contempt application/ application for disobedience of



L.H.T.D.

the court order, and feeling aggrieved by the same , the appellant has filed the present appeal, hereinafter refer to as the impugned order .

19. That feeling aggrieved by the said Impugned Order dated 24/11/2022 thereby striking of defence , which order was passed based on an impugned order passed in an application filed by the respondent claiming that the appellant has disobeyed the injunction order , the Appellant prefers the present appeal based on the following amongst other grounds taking up without prejudice to each within time prescribed in the law.

#### GROUNDS

a. That the Impugned Order dated 24/11/2022, as well as order dated 5/12/2019 is bad in law as well as on facts and without any bases of any evidence .

b. That Impugned Order dated 24/11/2022, as well as order dated 5/12/2019 is bad, illegal and against the



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principle of law and beyond the facts of the case in hand and without appreciation of evidence on record.

c. That the Ld. Trial Court erred in allowing the application for disobedience order dated 5/12/2019 is contrary to law and facts on records.

d. That the Impugned Order is passed without considering the oral and documentary evidence produced on record and in fact the order dated 5/12/2019 was passed without producing any independent and unbiased evidence.

e. That the Impugned Order arbitrary without application of mind and perverse and as such the same is liable to be quashed and set aside.

f. That the Ld. Trial Court ought to have held that the respondent has not made out case for allowing application filed by the Respondent/ Original Defendant.

g. That the Ld Trial Court Ought to have held that the Original Plaintiff/ Respondent should have produced an



LHTR

affidavit under section 65-B of Indian Evidence Act supporting the photographs produced on record and should have produced an independent evidence, hence the said photographs could not be relied upon in passing the impugned order dated 24/11/2022.

h. That the Ld Trial Court Ought to have held that there is no independent evidence produced on record by the Respondent/Original Plaintiff to establish the fact that the Appellant was doing the reconstruction work contrary to the order passed by the Hon'ble Court or the Appellant have disobeyed the injunction order dated 22/4/2010.

i. That the Ld. Trial Court should not have held the discretion to strike off the defence of the Appellant/Original Defendant and on the contrary should have utilised discretion to let the matter decided on merits on the main suit.

LHTD

j. That the Hon'ble Court may kindly reconsider the order dated 24/11/2022 by taking into consideration that the Appellant is a widow and an illiterate senior citizen lady who had relied upon the services of a lawyer under the Fee Legal Aid , hence the procedure adopted by the advocate under free legal aid should not have been affected to the party.

k. That the trial Court failed to consider the reply dated 30/4/2022 filed by the Appellant wherein it is categorically stated that the Defendant/Appellant have not done any contempt of the order dated 22/4/2010 which means that the Appellant have not disobeyed the court order as the reply was prepared by the Legal aid lawyer representing her.

l. That the Ld Trial Court failed to consider the reply of the defendant that the defendant is the law abiding senior citizen and have no intension to disobey the court order .



LHTD

m. That the Impugned Order is totally illegal.

n. That the Ld. Trial Court displayed total ignorance of law and facts.

o. The Ld. Trial Court did not even follow elementary principles of law and jurisprudence.

p. The Impugned Order if allowed to stand will work injustice to the Appellant apart from being patently illegal.

q. The Ld. Trial Court erred in reading the evidence on record.

r. The Ld. Trial Court acted with bias and prejudice when it said that the Appellant miserably failed to prove the case.

s. The Ld. Trial Court failed in passing impugned order in drawing adverse inference against the appellant.

t. The Ld. Trial Court acted with unfairness and was unjust to the Appellant.



u. The Id. Trial court ought to have held that the respondents have failed to prove the allegations and the contentions made out in the application.

v. The trial Court should not have held that the appellant have deliberately disobeyed the order.

w. The trial Court should not have held the respondent have made out a case for grant of an application for disobedience of the court order.

x. The trial Court should have held that the respondent have failed to make out a case for disobedience of the court order.

y. The reasoning given in the order is against the evidence on record and on the basis of so called presumption of facts.

z. The Trial Court committed an illegality in passing the impugned Order.

zi. The trial court ought to have held that the said order dated 05/12/2019 was passed without relying upon any



LHTT





independent evidence to prove the allegation of disobedience of the court order by the appellant. The trial court ought to have had that the photograph produced are not supported with independent witness nor any affidavit under section 65B of Indian evidence act was produced nor any report was produced supporting the photograph to prove that he same was of the suit house that is too after passing of the injunction order nor any evidence was produced to show that the injunction order was communicated and was explained soon after passing of the Court order. The trial court ought to have held that the appellant has not got an opportunity to lead evidence on their behalf for supporting her defence/ contention and hence this order passed for allowing the said contempt application/ application for disobedience of the court order, amounts to bad in law and hence liable to be set aside.



LHTP

Zii. The impugned order as well as earlier order holding the appellant having disobeyed the court order, is against the principal of natural justice.

Ziii. The trial court ought to have held that great Prejudice will cause to the appellant, in case impugned order is passed striking of defence and taking away her right to defend the suit on merits, balance of convenience favours the Appellant and the appellant will be on the road.

ziv. That Impugned order passed by the Trial Court is illegal, perverse, bad in law as well as on facts and contrary to the documents produced on record and great prejudice will cause to the Appellants in case the operation of the Impugned order is not set aside.

Zv. Any other ground taken up at the time of arguments.



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20. That the Appellant/Original is an old 70 years old lady and she is highly diabetic patient and being an aged widow and illiterate lady and residing in her Mundkarial house alone without any support from any one.

21. That the appellant was not aware about the fact about her son in law collected a certified copy of an impugned order and got it misplaced and did not informed to the appellant.

22. That the Appellant was only aware about collecting the certified copy of the order only on 2/02/2023 and immediately applied for a fresh copy, in the bargain there was a delay of <sup>44</sup> days in filling of the appeal.

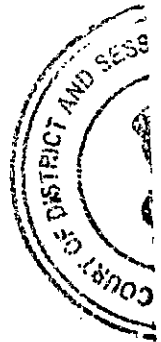
23. In view of above she could not file an appeal in time and when she came to know about the said order dated 24/11/2022 which was informed to her only on

02/02/2023. That the Appellant immediately engaged the advocate and filed the present appeal.

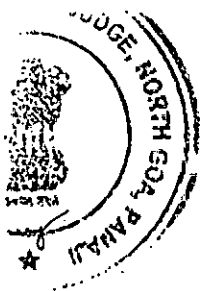
24. That said act of delay in filing appeal by the Appellant, was not wilful deliberate .In lieu of above it is therefore pray that delay in filling an appeal be ordered to be condoned and the appeal be order to be registered.

25. The Appellant had neither intention to disobey the court order neither committed any contempt nor disobeyed the Order wilfully, deliberately or intentionally.

26. That the impugned Order is passed on 24/11/2022, that it came to the knowledge of the Appellant only on 2<sup>nd</sup> February 2023, through her son in law who had collected the certified copy and got it misplaced and did not disclosed to the appellant about the same. Upon inquiry he informed her that he do not find it and he has



misplaced it , the appellant therefore filed a fresh application seeking a fresh certified copy on 2<sup>nd</sup> February 2023, which order was issued only on 6<sup>th</sup> February 2023, the Appellant therefore has filed an application for condonation of delay filed along with the present appeal , since the appeal is filed after <sup>44 R</sup>delay 44 days. The delay is not deliberate as the appellant was not aware about passing of the impugned order as it was not disclosed to her that the certified copy which was earlier applied by her was collected by her son in law . The delay is not on deliberate account of the appellant but it was the mistake of her son in law who collected a certified copy and misplaced it and did not informed her about the same.



27. Great prejudice will cause to the appellant in case delay is not condoned and appeal is not allowed, on the contrary in case impugned order is set aside by allowing appeal, the respondent will get an opportunity to defend the suit on merits.

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28. That the suit is valued for the purpose of court fees and jurisdiction at Rs.200 and necessary court fees are paid herewith.

29. That the addresses mentioned in the cause title are the registered addresses of the parties.

It is therefore prayed that:

a. The records and proceedings of the Trial Court be called for including in Civil Misc. Application no. 11/2016 in Regular Civil Suit no. 9/2010 from the Civil Judge Junior Division of Pernem may please be called upon to decide the present appeal.

b. An appeal be allowed and Impugned Order dated 24/11/2022 passed by Civil Judge Junior Division Pernem in Civil Misc. Application no. 11/2016 in Regular Civil Suit no. 9/2010 be quashed and set aside.



L H T P

## VERIFICATION

I, Mrs. Lilawati J. Shirodkar, Widow of late  
 Mr. Janardhan Shirodkar, 70 years of age, resident of  
 H.no. 1193 Kannaikwada Morjim Pernem Goa, the  
 Appellant herein do hereby states and verify that the  
 contents of an appeal memo stating facts at para 1 to 18,  
 19(part), 20 to 26, 28, are true and correct to my own  
 knowledge and the remaining paras are my legal  
 submissions made therein are my submission which I  
 believe to be true.



Verified on this

8th day of February 2023



Deponent

L.H.T.D

Read over, Explained in Konkani,

*[Signature]*

And Identified by me

*[Signature]*



Before Me  
 8/2/2023  
 District & Sessions Court, Panaji

## AFFIDAVIT

I, Mrs.Lilawati .J.Shirodkar,Widow of late Mr.Janardhan Shirodkar, 70 years of age, resident of H.no 1193 Kannaikwada Morjim Pernem Goa, the Appellant herein do hereby on solemn affirmation state that the contents of the above appeal stating facts at para 1 to 18 , 19(part), 20 to 26, 28, are true and correct and I have not concealed any facts and legal submissions made therein are my submission which I believe to be true .

Solemnly on oath on this

2 Feb  
8th day of ~~January~~ 2023



L.H.T.I

Deponent

Read over, Explained in Konkani,

And Identified by me

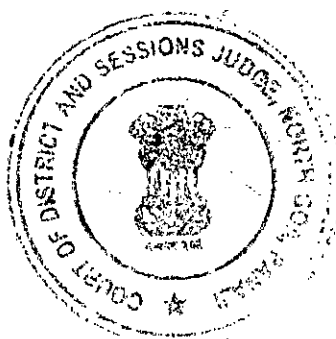
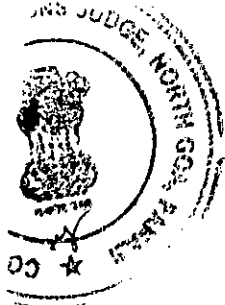
*[Signature]*  
Adv. S. Rao



Panjim Goa  
8/02/2023



L.H.T.I  
Lilawati Shirodkar



Solemnly affirmed before me by  
Shri/Smt. Lilawati S. Shirodkar  
who is identified by Adv. Ms. S. Raut  
whom I know personally

Panaji

[Signature]  
8/2/2023  
Superintendent  
District and Sessions Court  
Panaji-Goa

0  
Issue notices to respondents  
70 22/11/2023 at 10-00 am.

[Signature]

District Judge & Addl. Sessions Judge  
Mapusa-Goa

[Signature] District Judge

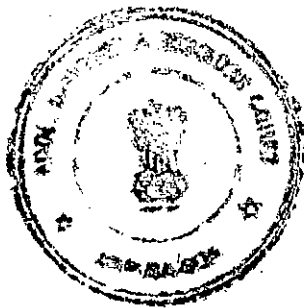
MCA/100/23

Order

15/8/26

Head Ld. Adm. Ms. S. Kant  
for the Appellant. In view of  
memo filed by her with  
copies of Orders, it is  
clear that the suit is  
withdrawn. Consequently,  
this MCA will not and  
does not survive.

Hence, MCA is  
dismissed as infructuous.  
proceedings closed.



Order

15/8/26

DD,  
Memorandum.