

Niti

IN THE HIGH COURT OF BOMBAY AT GOA

**WRIT PETITION NO.2976 OF 2023(F)
AND
WRIT PETITION NO.2977 OF 2023(F)**

GOA UNIVERSITY THR. ITS
REGISTRAR

...PETITIONER

Versus

HAROON IBRAHIM AND 2
ORS.

....RESPONDENTS

Mrs A. Agni, Senior Advocate with Ms Afrin Harihar and Mr Junaid Shaikh, Advocates for the Petitioner.

CORAM: M. S. SONAK, J.

DATE: 27th DECEMBER 2023

ORAL ORDER :

1. Heard Mrs Agni, learned Senior Advocate, who appears along with Ms A. Harihar and Mr J. Shaikh for the petitioner.
2. The challenge in these petitions is to the order dated 14.12.2023 made by the Trial Court below Exhibits 243 and 244. The application at Exhibit 243 sought for leave to amend the written statement and the application at Exhibit 244 sought for leave to produce additional documents supporting the proposed amendment or in connection with the proposed amendment.

3. Mrs Agni, the learned Senior Advocate for the petitioner submits that the amendment was necessitated due to subsequent events, that is obtaining permission from the Village Panchayat and constructing the partly demolished compound wall in pursuance of such permission. She submits that these subsequent facts were relevant since the respondent (plaintiff) was claiming a prescriptive or traditional access and the allegation in the plaint was that the Goa University was obstructing such use of alleged access.

4. Mrs Agni relied upon *Om Prakash Gupta V/s. Ranbit B. Goyal*¹ in support of her contentions. She pointed out that in terms of this decision subsequent events must be introduced in the pleadings by way of amendment.

5. Mrs Agni also referred to the decision of this Court in this very matter dated 11.04.2022 by which Writ Petition No.90/2022 and 91/2022 instituted by the Goa University were disposed of. She pointed out that this decision holds that the University will have the liberty to establish subsequent events based on the evidence.

6. I have considered the contentions advanced on behalf of Goa University. However, I find that no case of any error, much less jurisdictional error, has been made out warranting interference under Article 227 of the Constitution.

¹ (2002) 2 SCC 256

7. The suit is posted for continuation of final arguments on 04.01.2024. The issue of whether any permission was granted by the Panchayat and pursuant to such permission the breach in the compound wall was indeed repaired by the University is not so relevant. The main issue in the suit is whether the respondent (plaintiff) establishes his case of prescriptive or traditional access. Therefore, these events, even though subsequent, will have no bearing on the decision or on the fundamental issue involved in the suit. Incidentally, reference will have to be made to this Court's order dated 04.08.2023 in Appeal From Order No.1764/2022(F). In terms of this order, by way of interim relief, it was clarified that the respondent (plaintiff) would not interfere with the Goa University constructing a compound wall close to the breach in the wall provided the University obtains permission from the Panchayat. It was also clarified that even if the Goa University obtains permission/consent from the Panchayat and completes the construction thereby closing the breach, such construction will be subject to final orders in Civil Suit No.53/2012. It was made very clear that Goa University would claim no equities.

8. Now the so-called subsequent events concern obtaining permission from the Panchayat and constructing partially the compound wall and closing the breach. All these activities were made specifically subject to the final orders in the suit. Further, it was also clarified that the University will not be able to claim any equities based upon such subsequent developments. The decision in *Om Prakash*

Gupta (supra) no doubt provides that leave can be granted to bring on record by way of amendment subsequent developments. However, this is subject to such subsequent developments being relevant or necessary for deciding the fundamental issue in the suit and not otherwise.

9. The decision in Writ Petition No.90 and 91/2022 also indicates how the orders by which the University was declined leave to amend the written statement were not interfered with by this Court. In paragraph 6, this Court held that whether or not the compound wall was partly demolished by the plaintiff was a matter of evidence and since the Goa University had already contended and averred that the compound wall was existing before the Civil Suit was filed, no application for amendment was necessary.

10. No case is made out to interfere with the impugned order denying leave to amend. The order denying leave to produce documents is only consequential. Therefore, even said order warrants no interference.

11. For the above reason, both the petitions are dismissed.

12. There shall be no order for costs.

M. S. SONAK, J.