



Sonam

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 78 OF 2026

Mr. Santan E. Cardozo,
Son of late Evaristo Cardozo,
Aged 78 years, married,
Business,
Resident of Florida-2,
3rd Floor, Opp. Krishna Mandir,
Pajifond, Margao, Goa.

... Petitioner

Versus

1. M/s Venus Agents and Investors Association
Having its registered office at 2nd Floor,
Khwaja Manzil, Opp. Taxi Stand,
Mapusa, Bardez, Goa.
Through its:

i. President Milind Madhukar Bhende

ii. Secretary Abhijit Shivanand Sawant
Acting on behalf of all Agents and Investors,
including Shareholders of Redeemable Preferences
Shares in the Company Venus Life Marketing India Ltd.

2. John J. Pacheco,
Major of age,
R/o House No. 46/B,
Seraulim, Cuncolim,
Colva, Salcete, Goa.

3. Mrs. Maria Mendes,

Major of age,

R/o H. No. 225, Seraulim,

Verna, Goa.

4. M/S VENUS LIFE MARKETING (I) LTD,

A deemed Public Limited Company

Having its registered office at

208, Kukreja Centre, 2nd Floor,

“c” WING, Sector-11,

C. B-D, Bellapur,

Navi Mumbai 400614

And Branch Office at 6th Floor,

Dempo Towers,

Patto Plaza Complex,

Panaji, Goa.

Through its

a. Managing Director

Shri. Santosh Shashikant Dabholkar

Residing at Block No. 321,

Tidal Housing Society,

Sector 20, Plot 6 Koper Kharirane,

Navi Mumbai.

b. Director

Shri. Shashikant Pandit Ahire

Block 19/326, Gr. Floor,

BPT Raynold Colony,

Tejas Nagar, Wadala E

Mumbai 400037.

c. Director

Ramakant Shashikant Dabholkar,
Residing at Block No. 321,
Tridal Housing Society,
Sector 20, Plot 6, Koper Kharirane,
Navi Mumbai.

... Respondents

Mr. Gaurish Agni with Mr. Kishan Kavlekar and Ms. Laxmi Sawant, Advocates for the Petitioner.

Mr. Arun Kumar Pandey- Licensee, present in person.

Mr. S. M. Singbal, Advocate for the Respondent Nos. 2 and 3.

CORAM:- VALMIKI MENEZES, J.

DATED :- 3rd February, 2026

ORAL JUDGMENT

1. Registry to waive office objections and register the matter.
2. Heard learned Advocates for the parties.
3. Rule. Rule is made returnable forthwith; at the request of and with the consent of learned Advocates for the parties, the matter is finally heard and disposed of. Learned Advocate Mr. Mr. Kishan Kavlekar waives service on behalf of the Petitioner Mr. Arun Kumar Pandey, Advocate and Licensee of the suit premises present in person waives service of notice and learned

Advocate Mr. S. M. Singbal waives service on behalf of Respondent Nos. 2 and 3.

4. This petition impugns order dated 17.02.2023 passed by the Court of Civil Judge Senior Division at Merces on an application at Exhibit D-55 filed under Order 21 Rule 58 CPC, raising objections to the execution of the money Decree dated 17.04.2007, obtained by Respondent No.1 in Special Civil Suit No. 46/2006/B(New).

5. The two main arguments raised by the Petitioner, represented by learned Advocate Mr. Gaurish Agni, are the following:

(i) That this Court, by its order of 09.10.2017, passed in Writ Petition No. 745/2017 had set aside an earlier order passed by the Executing Court dated 31.03.2016, dismissing the objections of the Petitioner without conducting any inquiry; that despite directions contained in this Court's order dated 09.10.2017, in which the Executing Court was directed to decide the objections, the Executing Court has failed to conduct any inquiry or to hear the application afresh and has dismissed the objections without deciding them on their merits.

(ii) That the Executing Court has erroneously relied upon certain findings and the Decree passed in Regular Civil

Suit No. 93/2012/D, which was filed at the behest of the Petitioner, to hold that the Petitioner's rights have been determined in that Decree, and no purpose would be served in holding any further inquiry or fresh investigation in the Execution Proceeding to determine the Petitioner's right to object to the Decree.

6. Certain facts, relevant for the decision of this petition, would required to be referred to:

(a) Special Civil Suit No. 69/2004/A(Old), was filed by Respondent No. 1 (M/s Venus Agents and Investors Association), against one Venus Life Marketing India Ltd., Defendant No. 1 in that suit; the Plaintiff in that suit is Respondent No. 1 in the present petition. The Decree was obtained by the present Respondent No. 1 against M/s Venus Life Marketing (I) Ltd. (Respondent No. 4) for an amount of Rs. 3,47,82,239/- with interest thereon at 11% per annum from the date of maturity of certain share certificates till the actual payment. That Decree was sought to be executed against the said M/s Venus Life Marketing (I) Ltd. (Respondent No.4) in Execution Proceeding No. 37/2007/B, before the Civil Judge Senior Division at 'B' Court, Panaji.

(b) It is the matter of record that the Executing Court by order of 31.03.2016, directed the attachment of the suit

property in execution of the money Decree obtained by Respondent No. 1. This Execution Proceeding came to be objected to by the present Petitioner, who filed an application dated 14.09.2016 under Order 21 Rule 58 CPC (Exhibit D-55), claiming that they had an Agreement dated 12.02.2004 with the said M/s Venus Life Marketing (I) Ltd. (Respondent No. 4 and Judgment Debtor), under which they claimed that they had made full payment for purchase of the suit premises with the consent of the original developer M/s V. S. Dempo & Co. Pvt. Ltd. It was further the case of the Petitioner/objector that he had filed Regular Civil Suit No. 93/2012/D on 07.07.2012, in which the Petitioner sought a Decree declaring him to be the owner in possession of the suit premises; in the same suit the Petitioner had also sought reliefs of mandatory injunction against Defendant No. 2 M/s V. S. Dempo & Co. Pvt. Ltd. to execute a Deed of Sale/ Conveyance in favour of the Petitioner and for permanent injunction.

(c) This application was heard, and without conducting any inquiry, the Executing Court dismissed the objections of the Petitioner on 06.06.2017. The order of 06.06.2017 came to be challenged before this Court in Writ Petition No. 745/2017, which petition came to be allowed by order of 09.10.2017. In that order, this Court set aside the order dated 31.03.2016, passed by the Executing Court and

directed the Executing Court to implead the Liquidator, claimed by Respondent No. 1 to have been appointed under a liquidation proceeding to dissolve M/s Venus Life Marketing (I) Ltd. In addition, this Court directed the Executing Court to decide the objections dated 14.09.2016, filed by the Petitioner afresh, after hearing the parties and to decide the matter in accordance with law and within a period of three months from receipt of this Court's order. In addition, put the Petitioner to terms that, during the pendency and until the decision on all the objections, the Petitioner will not create any third party interest by way of sale, lease or otherwise, thereby in the suit premises.

(d) In the meantime, the Petitioner's Regular Civil Suit No. 93/2012/D came to be dismissed on 13.06.2022. Against this Decree, the Petitioner filed the First Appeal on 22.07.2022, which was registered as Regular Civil Appeal No. 62/2022; this Appeal came to be dismissed for default on 08.06.2023 and after which a restoration application along with the application for condonation of delay was filed on 28.12.2023, and is pending disposal; next date being fixed on 12.03.2026. The application for condonation of delay and for restoration of the Appeal is numbered as Civil Miscellaneous Application No. 40/2024, and is pending before the Court of District Judge-1 & Assistant Sessions Judge at Merces.

(e) In addition to all these proceedings pending before various Courts, the learned Counsel for the respective parties have brought to my notice that Respondent No. 1 has in the meantime filed Regular Civil Suit No. 93/2013/D, before the Court of Civil Judge Junior Division 'D' Court at Merces, challenging an Agreement dated 08.07.2010, which is a registered Agreement for Assignment of Rights with the Possession, between Respondent No. 4 (M/s Venus Life Marketing (I) Ltd.) in favour of the Petitioner; in this suit, Respondent No. 1 had pressed for an interim relief of temporary injunction to restrain the Petitioner from using the suit premises or transferring the same or creating any third party rights, which came to be dismissed on 06.05.2016, and a challenge to this order came to withdrawn in view of the attachment order passed by the Executing Court. This suit is pending trial before the Civil Court.

(f) In addition to these proceedings, Respondent No. 1 claimed that M/s Venus Life Marketing (I) Ltd. has sought voluntary winding up of the company, and Respondent No. 1 claims, in its defence in the Petitioner's Regular Civil Suit No. 93/2012/D, that in view of a resolution of the share holders of that company, resolving to voluntary wind it up, the suit itself would not be maintainable in view of the provision of Section 490 of the Companies Act;

this defence was taken up on the premise that the Petitioner could not enter into any agreement in view of the aforesaid provisions of law.

7. In the light of the aforementioned undisputed facts, learned Advocate Mr. Singbal, appearing for Respondent No. 1, advanced the following submissions:

(i) That the provisions under Order 21 Rule 58 CPC do not contemplate that in all cases a full scale inquiry is required to be held; he submits that, it is only when the objector makes out a case of an independent title in its objections to the Decree, that the Court is obliged to proceed to record an inquiry in terms of Rule 98 to Rule 105 of Order 21 CPC and not otherwise. He has submitted that in the Decree dated 13.06.2022, passed in the Petitioner's Regular Civil Suit No. 93/2012/D, a specific finding has been given by the Court that the Petitioner has not been able to prove that his Agreement is with the consent of the original developer i.e. M/s V. S. Dempo & Co. Pvt. Ltd. nor has the Petitioner been able to prove his possession of the premises, or that he was inducted in the suit premises pursuant to the agreement under which he claims enforcement in the suit. It was further submitted that since there is a categorical finding of the Civil Court, in the Petitioner's suit, negating the title claimed by the

Petitioner, the issue as to the Petitioner's title has been decided by the Court and therefor the Executing Court could not be called upon to decide whether the Petitioner has a title, as claimed by him in the objections filed under Order 21 Rule 58 CPC.

(ii) It was further contended that the shareholders of the M/s Venus Life Marketing (I) Ltd. having passed a resolution subject to voluntarily winding up of that company, the provision of Section 491 of the Companies Act 1956, would be applicable, under which the Petitioner was precluded from entering into any Agreement with any third party with regard to the suit premises; it was contended that it was more so since the resolution of the shareholders which is dated 18.08.2004 resolves to wind up the company and to appoint a liquidator who was named in the resolution.

8. I have heard the rival submissions of the parties, and have gone through the records of the case.

9. At the outset, what needs to be first considered is the directions passed by this Court in its order of 09.10.2017 passed in Writ Petition No. 745/2017. That was an order passed in the light of the fact that no inquiry was conducted by the Executing Court before passing of the order whilst dismissing the

application under Order 21 Rule 58 CPC at Exhibit D-55 before the Executing Court. This Court, in its Judgment dated 09.10.2017 has recorded the statement of the Petitioner that, during the pendency and whilst deciding all objections before the Executing Court, no third party interest would be created, and thereafter it set aside the impugned order and directed the Executing Court to decide the objections afresh after impleading the Liquidator appointed pursuant to a Resolution passed by shareholders of M/s Venus Life Marketing (I) Ltd. After the matter was taken up afresh before the Executing Court, has not heard the application on its own merits, and instead has considered the Judgment and Decree passed in the Petitioner's suit bearing Regular Civil Suit No. 93/2012/D, which by then came to be dismissed; the Executing Court has then considered the findings in the Decree passed in the Petitioner's suit, that the Petitioner had failed to prove his rights under agreement dated 08.07.2010. The Executing Court also takes note of the findings in that Decree that the Petitioner had not shown any right to the attached suit premises. Consequently, the Executing Court dismissed the application without entering into its merits or holding any preliminary inquiry on the title set out by the Petitioner.

10. The Executing Court had obviously not considered the fact that the Decree passed in the Petitioner's suit was pending an

Appeal before the District Court, even though that Appeal may have been dismissed for default, and a restoration application was pending before the District Court. The fact remains that if the Appeal was to be restored or thereafter, if the Petitioner was to succeed in his Appeal, the proceeding in the execution before the Trial Court would take a completely different complexion. The Executing Court had to therefore either arrive at its own independent conclusion as to the title set up by the Petitioner in its application under Order 21 Rule 58 CPC or might have chosen to wait for the outcome of the Appeal against the Decree dismissing the Petitioner's suit. Whichever way the Executing Court looked at it, it had to, independent of the findings, rendered by the Civil Court in Regular Civil Suit No.93/2012/D. come to its conclusion on the Petitioner's title to the suit property. This is the first infirmity I find in the passing of the impugned order. This is apart from the fact that the Executing Court had to at least conduct some preliminary inquiry to conclude that the title set up by the Petitioner was without any basis. Consequently, on this count alone, the impugned order would have to be quashed and set aside.

11. Apart from this issue, even if I assume that the Executing Court, could have examined the findings rendered by the Civil Court in the Petitioner's suit, the fact remains that one of the finding rendered in that suit was that Respondent No. 1 had not

proved that M/s Venus Life Marketing (I) Ltd. had actually undergone the process of liquidation and a liquidator had infact been appointed by resolution of the shareholders. This was a specific issue raised in that suit and answered against the Respondent no. 1. Even going by this finding, the question whether the Petitioner's Agreement dated 08.07.2010 was passed in contravention of provisions of Section 491 of the Companies Act, could not been answered at that stage since, in any case, the matter has been pending in Appeal before the District Court.

12. Consequently, for the reasons stated above, the impugned order dated 17.02.2023 is quashed and set aside. The matter is remanded back to the Executing Court that is the Court of Civil Judge Senior Division at Merces dealing with the Special Execution Proceeding No. 37/2007/B, with direction for the Executing Court to examine the application at Exhibit D-55 under Order 21 Rule 58 CPC; it is for the Executing Court to decide whether it would await the outcome of Civil Miscellaneous Application No. 63/2023/B or RCA No. 62/2022, before the District Judge-1, or whether it would conduct its own inquiry into the application and conclude whether the Petitioner has any right to object to the Decree.

13. Considering that a lot hinges upon the decision in the Civil Miscellaneous Application No. 63/2023/B and RCA

No.62/2022 pending before the District Judge-1 at Merces, I deem it appropriate to direct the District Judge-1 dealing with Civil Miscellaneous Application No. 63/2023/B and RCA No. 62/2022 to dispose of the application for condonation of delay/restoration of the Appeal/RCA No. 62/2022 which is now listed on 12.03.2026, by 31.05.2026. The restoration application, which is filed along with Civil Miscellaneous Application No. 63/2023/B, shall be registered separately but heard along with Civil Miscellaneous Application No. 63/2023/B for condonation of delay and be decided on the same date.

14. Considering that issues raised in Regular Civil Suit No. 90/2013/D, which is pending before the 'D' Court at Merces, are directly connected with execution proceeding no. 37/2007/B, which is pending before 'B' Court at Merces, I deem it appropriate to exercise powers under Section 24 CPC and to transfer the Regular Civil Suit from 'D' to 'B' Court of Civil Judge Senior Division 'B' Court, who shall as far as possible take both these matters simultaneously or on the same date.

15. It has been brought to my notice that despite this Court's direction to the Petitioner, not to create any third party right to the present suit property, the Petitioner has entered upon three consecutive Agreements for Leave and Licence with Advocate

Mr. Arun Kumar Pandey, who is present in the Court today, last of such Agreement for Leave and Licence, which is placed before me expired on 31.12.2025, though the licensee continues to occupy the premises as on today. Mr. Pandey, who is present in the Court is also apprised of the fact that since he received notice from the Executing Court in October, 2025, he has not been paying licence fees to the Petitioner, considering the controversy in the petition. In this fact, I deem it appropriate to permit Mr. Pandey to pay the pending licence fee from October, 2025 until the premises is vacated. Mr. Pandey makes a statement that he will vacate the said suit premises by 31.03.2026. This statement is accepted as an undertaking to this Court. The licence fees shall be paid directly to the Petitioner.

16. On Mr. Pandey vacating the suit property, the Petitioner shall not create an encumbrance of any nature in the suit premises whether by transfer or by inducting any person under licence thereunder. The suit premises to be kept close until disposal of Execution application or Regular Civil Appeal No. 62/2022.

17. For the foregoing reasons, the petition is allowed, and the impugned order dated 17.02.2023 is quashed and set aside, and the matter remanded back to the Executing Court to follow directions stated in Paragraph No.12 above.

Regular Civil Suit No. 90/2013/D, which is pending before the 'D' Court at Merces, shall stand transferred to the file of Civil Judge Senior Division 'B' Court at Merces, who shall now take up this suit along with Execution Proceeding No. 37/2007/B, and shall as far as possible take both these matters simultaneously or preferably on the same date. Rule is made absolute in the above terms.

18. It has come to my notice that in several cases where applications for condonation of delay are pending along with an application for restoration of a proceeding, the Civil Courts and the District Courts pass orders granting the application for condonation of delay and a separate order on the application for restoration of proceedings at a later date. Obviously, if the application for condonation of delay is dismissed, the application for restoration must necessarily fail. Ideally, both applications i.e. application for condonation of delay and the application for restoration of a proceeding, must be registered simultaneously to avoid delay in such proceedings, and if the application for condonation of delay is allowed, the restoration application must be decided immediately on the same date, instead of deferring orders on the restoration application.

19. The Registrar (Judicial) of this Court shall forward this Judgment to the Principal District Judges of North and South Goa District, with a direction to circulate the contents and

directions contained in Paragraph No. 18 above to all Courts subordinate to the District Court, and to ensure that they are complied with.

VALMIKI MENEZES, J.