

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 499 OF 2022

1. Mrs Oswina Daryl Paes,
daughter of Orlando Paes, service,
aged 41 years
married, residing at H.No.911,
Morgado, Goa Velha, Ilhas Goa

2. Mr. Daryl Gonsalves,
Son of Late Mr. Teodor Gonsalves,
aged 50 years, married, Asst. Professor,
residing at H.No.911 Morgado,
Goa Velha, Ilhas Goa 403 108

... Petitioners.

Versus

1. Mr Deepak Madhav Surlakar
son of late Mr. Madhav B. Surlakar,
major in age, married,
businessman, residing at
Flat No S-1, Building No A-4, Models
Legacy Complex Taleigao,
Ilhas, Goa 403 002,

2. Mrs Deepti Deepak Surlakar,
Wife of defendant No.1,
aged 62 years housewife residing at
Flat No S-1, Building No A-4,
Models LegacyComplex,
Taleigao, Ilhas, 403 002.

... Respondents.

Mr Rohit Bras de Sa, with Mr P. Naik, Advocates for the
Petitioners.

Mr Deepak Gaonkar with Mr Akhil Govekar, Advocates for the Respondents.

CORAM : M. S. SONAK, J.

DATE : 28th SEPTEMBER 2023

ORAL JUDGMENT:

1. Heard Mr Rohit Bras De Sa, who appears along with Mr P. Naik and Mr Deepak Gaonkar, who appears along with Mr Akhil Govekar for the Respondents.
2. Rule. The rule is made returnable immediately at the request of and with the consent of the learned Counsel for the parties.
3. The challenge in this Petition is to the impugned order dated 15/3/2022, by which the learned Trial Judge dismissed the Petitioners' (original Plaintiffs') application at Exhibit D/11.
4. The Petitioners are the Plaintiffs, and the Respondents are the Defendants in Regular Civil Suit No. 91/2020/C. The case of the Petitioners in the plaint is that they advanced an amount of ₹4.00 lakhs on 27/1/2016 to Defendant No.1 via RTGS. This amount was transferred from account No. 00591050082934 at HDFC Bank, Panjim branch on 27/1/2016 to account No. 0381304000000001 at NKGSB Co-Operative Bank, Panaji of the Defendants. A copy of the bank statement was annexed to the plaint at Annexure C. There are clear averments to this effect in paragraph 5 of the plaint.

5. Paragraph 5 of the plaint is transcribed below for the convenience of reference:

“5. Towards the said purchase, the plaintiff No.1 advanced a sum of Rs. 4,00,000 (Rupees Four Lakhs Only) on 27.01.2016 to the defendant No. 1 via RTGS and this amount was transferred from the Account No. 00591050082934 at HDFC Bank, Panjim Branch, on 27.01.2016 to the Account No. 038130400000001 at NKGSB Co-Operative Bank, Panaji, of the defendants. Copy of the bank statement is annexed to the list of documents as Annexure C.”

6. The Respondents/Defendants filed their written statement in the matter. Their response to the averments in paragraph 5 of the plaint is to be found in paragraph 12 of the written statement. The Respondents/Defendants took a bold stand that the Plaintiffs have not transferred any amount in the bank account of any of the Defendants, and, therefore, the allegations in paragraph 5 of the Plaint are denied as being false and frivolous.

7. Paragraph 12 of the written statement is transcribed below for the convenience of reference:

“12. With reference to para 5 of Plaint, it is specifically denied that towards the said purchase, Plaintiff No.1 advanced a sum of Rs.4,00,000/- on 27/01/2016 to the Defendant No.1 via RTGS

and this amount was transferred from the Account No.00591050082934 at HDFC Bank, Panjim Branch, on 27/01/2016 to the Account No.038130400000001 at NKGSB Co-operative Bank, Panaji of the Defendants and Plaintiffs are put to strict proof thereof. It is stated that Plaintiffs have not transferred any amount in the bank account of any of the Defendants and therefore said allegations are denied being false and frivolous.”

8. Given the above pleadings, the Petitioners/Plaintiffs applied for Order 16, Rule 6 of CPC, read with Order 7, Rule 14 of CPC and Section 151 of CPC, seeking direction from the Trial Court to the NKGSB Co-Operative Bank, having its Branch at St. Inez, Panaji, Goa to produce the documents referred to in paragraph 2 of the said application, so that certified copies of such documents can be kept on record and original returned to the Bank, after verification. The application states that once the documents are produced, the Petitioners should be allowed to rely upon and produce the same in the matter at the stage of evidence.

9. Paragraph 2 of the application at Exhibit D/11, which contains a list of documents regarding which directions were sought, reads as follows:

“In view of the said submission the plaintiff wishes to rely upon the following documents which are in possession of

NKGSB Co-Op, Bank, St Inez, Panaji-Goa with respect to the account No.038130400000001:

a) The application form seeking to open the account Sona Mona Developers.

b) the record of who is shown as a proprietor.

c) The specimen signatures recorded and mentioned in the bank.

d) Statement of account from 27/01/2016.”

10. The Trial Court has dismissed the application at Exhibit D/11, mainly by observing that the same was premature and that at the appropriate stage, a summons could be sent to the bank manager for the production of the said documents. The Trial Court has referred to the provisions relied upon by the parties and held that Section 151 of the CPC would not apply because of the specific provisions available under the CPC for summoning witnesses and producing documents.

11. Mr Gaonkar fully supports the view taken by the Trial Court and reiterates that the Petitioner’s application was premature and, therefore, the same was rightly rejected. He submits that the Petitioners are not remediless in the matter because they can, at the appropriate stage always summon the bank manager.

12. Mr De Sa submits that the view taken by the learned Trial Judge warrants interference because such a view only assists the defendants in delaying the proceedings. He submits that the Petitioners have paid the amount through RTGS in the Defendants' bank account. If there is any truth in the Defendants' defence that they have nothing to do with this bank account and consequently, they have not received this amount, then, the Defendants should have themselves produced the documents to show that they have no connection with the bank account in which the amount was transferred through RTGS. He submits that instead, the Defendants, with a view to simply delay the matter and prevent the Court from arriving at the truth, have raised all sorts of objections, which were ultimately accepted by the Trial Court, without taking a holistic view of the matter. He submits that the interests of justice were sacrificed and the view taken simply assists the Defendants in prolonging the matter.

13. Mr De Sa relied on *Ritesh Tewari and another vs. State of Uttar Pradesh and Ors.* (2010) 10 SCC 677 to submit that the Civil Courts have sufficient powers to do justice and procedural provisions should not be interpreted with rigidity, particularly when the cause of justice and expeditious disposal would suffer.

14. In my judgment, the Petitioners' application at Exhibit D/11 should have been allowed in the facts and circumstances of the

present case. The Petitioners/Plaintiffs had categorically pleaded about the transfer of amounts through regular banking channels in the specified bank account, which they allege is that of the defendants. The averments in paragraph 5 of the plaint, quoted above, are quite clear and unambiguous.

15. The Respondents/Defendants have denied that the Plaintiffs have transferred any amounts in their bank account. They have even gone to the extent of stating that the averments in paragraph 5 are “false and frivolous”. However, apart from such denials, the Defendants did not state whether they have any truck whatsoever with the bank account in which the amounts were transferred by the Plaintiffs through the regular banking channel. They did not aver about their actual bank account.

16. It is not as if the Defendants are required to do all this, given the rules of pleadings. However, where the Defendants do not bother to do all this, the least that is expected is that such Defendants do not create any hurdles when the opposite party makes a reasonable request for calling upon the bank authorities to produce details concerning the account in which such parties have transferred the amount through the regular banking channel. The Trial Court should have considered this matter from this perspective, which, it has not. Therefore, the impugned order warrants interference to

promote the interests of justice and also expeditious disposal of the issues in the suit.

17. No party can have a vested interest in delaying the proceedings by insisting upon rigid compliance with the procedural provisions. In this case, it is not as if the request made by the Petitioners/Plaintiffs was contrary to any of the provisions of the CPC or any breach of the procedure prescribed in the CPC. Ultimately, procedural provisions must not be interpreted as an impediment to the cause of justice. When technical and substantive provisions are pitted against each other, the former must yield. The request of the Petitioners was not barred under any provisions of the CPC. The request, if granted would promote substantial justice and expedite the conclusion of the suit.

18. Mr De Sa submitted that if the documents produced by the Bank show that the Defendants had nothing to do with the bank account in which the amounts were transferred by the Plaintiffs, perhaps the Plaintiffs' suit might fail. However, if the documents show that the bank account in which the amounts were transferred was indeed that of the Defendants, then, the suit could be expedited. He submitted that in such a situation, it would be at least *prima facie* established that the defence of the Defendants was itself false and frivolous and not other way round. In the peculiar facts of the present case, such a contention deserves to be accepted.

19. In *Ritesh Tewari and another* (supra), the Hon'ble Supreme Court has held that a wide discretion has been conferred on the Court to act as the exigencies of justice require. Thus, in order to discover or obtain proper proof of the relevant facts, the Court can ask the question to the parties concerned at any time and in any form. The Court emphasized that every trial is a voyage of discovery in which truth is the quest. Therefore, power is to be exercised with an object to subserve the cause of justice and public interest, getting the evidence in aid of a just decision and to uphold the truth. The purpose is to secure justice by full discovery of truth and an accurate knowledge of facts, the Court can put questions to the parties, except those which fall within exceptions contained in Section 165 of the Evidence Act. The Court noted that in the case before it, despite the Court's sincere efforts, the Court could not succeed in eliciting the true facts.

20. Although the above decision was in the context of the provisions of Section 165 of the Evidence Act, 1872, the observations of the Hon'ble Supreme Court are not irrelevant to the subject matter of the present case. Here, by allowing the application at Exhibit D/11 the Trial Court had an opportunity to at least come closer to the truth. Instead, the Trial Court, perhaps, swayed by the hyper-technical contentions on behalf of the Defendants, dismissed this application with a lengthy order, thereby allowing the

Respondents/Defendants to delay the matter or, in any case, rendered the voyage of discovery of truth even harder than what it usually is. The impugned order, therefore, warrants interference.

21. Accordingly, the impugned order is set aside and the Petitioners' application at Exhibit D/11 is allowed.

22. Rule is made absolute in the above terms.

23. There shall be no order for costs.

24. All concerned to act on an authenticated copy of this order.

M. S. SONAK, J.

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