

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 40 OF 2015**

SHRI JOSE ROQUE PINTO ... Petitioner
Versus
MR. JOSE VIVEK DIAS AND 5 ORS. ... Respondents

Mr. Rui Gomes Pereira, Advocate for the Petitioner.
Mr. R. Menezes, Advocate for Respondents No.1 & 2.
Mr. A. Halarnkar, Advocate for Respondent No.5.

Coram:- M. S. SANKLECHA, J.
Date:- 17th March, 2015

ORAL ORDER:

This petition under Article 226 of Constitution of India challenges the order dated 2 April 2014 passed by the District Judge 2, South Goa, Margao. The impugned order rejects the petitioner's (original plaintiff) application to file affidavit in rejoinder sought to be filed after the respondents (original defendants no.1 & 2) had argued on the basis that the petitioner has not filed any affidavit in rejoinder.

2. The impugned order is dated 2 April 2014, thereafter there was a change in the presiding Judge. I am informed at the bar that the arguments in respect of an interim application filed by the petitioner have been concluded and the matter is reserved for orders.

3. In the present facts, I am not inclined to exercise any extraordinary writ jurisdiction in view of the conduct of the petitioner as the impugned order was passed on 2 April 2014 and this petition has been filed only on 12 January 2015. In the meanwhile, the matter has been fully heard by a succeeding Judge in respect of interim relief and orders are reserved. In case the petitioner was prejudiced by the impugned order they would not have waited till hearing of the interim application by the Trial Judge. This delay on the part of the petitioner in challenging the impugned order does create a doubt about any prejudice to them for the petitioner proceeded with the hearing of his interim application before the Trial Court.

4. In any case, it would be open to the petitioner to take this as a ground of appeal in case the order of the Trial Judge is adverse to the petitioner on his interim application. Thus at this stage in view of the conduct of the petitioner, I am not inclined to interfere.

5. Accordingly petition stands dismissed.

M. S. SANKLECHA, J.

NH/-