

**IN THE HIGH COURT OF BOMBAY AT GOA**

**WRIT PETITION NO. 294 OF 2015**

SHRI. JOHNY JOAO CARDOZO., ... Petitioner  
Versus  
SMT. MARIA CRISTINA DIAS & 2ORS., ... Respondents

Mr. Ashwin D. Bhobe, Advocate for the petitioner. Mr. Jagannath Jayant Mulgaonkar, Advocate for the respondent no.1.

Coram:- F. M. REIS, J.

Date:- 12th June, 2015

P.C.

Heard Mr. A. D. Bhobe, learned counsel appearing for the petitioner and Mr. J. J. Mulgaonkar, learned counsel appearing for the respondent no.1.

2. The above petition inter-alia takes an exception to the order dated 27.02.2015 passed by the learned Ad-Hoc District Judge-I, FTC, Margao, whereby the respondents were permitted to produce the original bank draft and the application for requisition of such draft.

3. Mr. A. D. Bhobe, learned counsel appearing for the petitioner points out that the provisions of Order 41 Rule 27(a) of the Civil procedure Code have not been satisfied by the respondents and as such no leave to produce the additional documents could be allowed

by the learned Judge. The learned counsel further submits that it is well settled that such application has to be examined at the time of the final hearing of the appeal and the failure by the Lower Appellate Court in complying such procedure would itself suggest that the Court has exercised its jurisdiction with material irregularity.

4. The learned counsel further submits that the grounds on which the application has been allowed are according to him misplaced as it is pointed out that the original Advocate himself had argued the matter at the time of the final arguments before the learned Trial Judge. The learned counsel further submits that as such the learned Judge was not justified to pass the impugned order.

5. On the other hand, Mr. J. J. Mulgaonkar, learned counsel appearing for the respondent no.1 has pointed out that the impugned order came to be passed in the course of extensively argued on merits in the appeal preferred by the respondents herein. The learned counsel further submits that only after examining the material on record and documents produced by the parties the impugned order was passed granting leave to the respondents to produce such documents. The learned counsel further points out that these documents were already relied upon by the respondents along with other original documents and only because the junior Advocate was appearing at the time of the recording of evidence such documents remained to be produced at the relevant stage. The learned counsel

further submits that there is no jurisdictional error committed by the learned Judge while passing the impugned order and consequently, the petition deserves to be rejected.

6. I have duly considered the submissions of the learned counsel and I have gone through the records.

7. Mr. Bhobe, learned counsel appearing for the petitioner may be justified to contend that in the normal course such applications are to be examined at the time of the hearing of appeal on merits. But however, taking note of the contention of Mr. Mulgaonkar, learned counsel appearing for the respondent no.1, nothing has been noted in the impugned order or in the reply filed by the petitioner that in fact such objection was raised by the petitioner before the learned Lower Appellate Court. As such, I find that the question of interfering in the impugned order in the present Writ Petition under Article 227 of the Constitution of India would not at all be justified. The petitioner has taken a chance in allowing the Court to pass the impugned order without raising any such objection and consequently, it would not be appropriate to examine such contention at this stage in the present Writ Petition when it is pointed out that the application was disposed of during the course of the hearing of the appeal on merits.

8. Apart from that, the learned Judge has in fact noted that the petitioner are permitted to cross examine on the said documents. As

such considering the application afresh at the time of the final hearing would cause further delay and prejudice in deciding the appeal on merits.

9. In such circumstances, I find that there is no jurisdictional error committed by the learned Judge which would call for interference by this Court under Article 227 of the Constitution of India at this stage. Hence, the petition stands rejected with liberty to the petitioner, if so advised to challenge the impugned order in case any adverse order is passed against the petitioner at the time of the final disposal of the appeal on merits.

10. Subject to the above, the petition stands accordingly rejected.

F. M. REIS, J.

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