

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.524 OF 2015**

Mrs. Leunora Antao,
44 years of age,
Daughter of Dores Camilo Francisco,
r/o. H.No.269, Cavorim, Chandor Goa,
presently residing at 423 A,
High Road, Willesden,
London, NW10 2JN
Through her Power of Attorney holder
Mrs. Victoria Remediana Francelina Antao,
Major, resident of Cavorim,
Chandor, Salcete-Goa. Petitioner

V/s

Shri Pradip Sadassiva Naik,
Son of Sadassiva Naik,
Aged about 50 years, married,
Resident of H.No.770, Poiria Mayem,
Post Assonora, Bicholim Goa
and presently residing at Flat – 2,
716, North Circular Road Neasden,
London Postcode NW2 7HQ. Respondent

Shri Nigel Da Costa Frias, Advocate for the Petitioner.
Shri S. Karpe, Advocate for the Respondent.

Coram:- C. V. BHADANG, J.

Date:- 30th September, 2015

ORAL JUDGMENT :

Rule. Rule made returnable forthwith. Shri S. Karpe, the learned Counsel waives service for the respondent. Heard finally by consent.

2. By this petition, the petitioner who is the respondent in

Matrimonial Petition No.15/2013/A on the file of the learned Adhoc Civil Judge, Senior Division, Bicholim is challenging the order dated 13/03/2015 (below Exhibit D-20) by which the application for recalling the order dated 15/09/2014 closing the cross-examination of the respondent (PW1) and for permission to cross-examine the respondent was rejected.

3. The brief facts are that the respondent has filed the petition for dissolution of marriage which is pending on the file of the learned Adhoc Civil Judge, Senior Division, Bicholim. It appears that the issues were framed in that petition on 13/06/2014 and the petition was fixed for evidence of the respondent on 11/07/2014 and thereafter on 6/08/2014, on which dates the petition was adjourned at the instance of the respondents. On 27/08/2014, there was no appearance on behalf of the petitioner and the chief examination of the respondent was recorded in part and the petition was adjourned to 3/09/2014 on which date the Presiding Officer of the Court was on leave. It appears that the matter was taken to the incharge Court at Mapusa on 15/09/2014 when the chief examination was completed and the Court recorded an order about there being no cross-examination on behalf of the petitioner. It appears that on 18/10/2014, the petitioner filed an application for recall of PW1 permitting cross-examination. That was opposed on behalf of the

respondent. The learned Trial Court by the impugned order has dismissed the said application.

4. I have heard Shri Nigel Da Costa Frias, the learned Counsel for the petitioner and Shri S. Karpe, the learned Counsel for the respondent.

5. It is submitted that on account of the fact that the date of the matter was incorrectly mentioned in the diary of the Counsel of the petitioner herein, there was absence on behalf of the petitioner which has led to the order closing the evidence without cross-examination on behalf of the petitioner.

6. On the contrary, the learned counsel for the respondent has pointed out that an application Exhibit D-14 was filed on behalf of the respondent herein on 11/07/2014 stating that the respondent would be available in India and the hearing may be fixed during the period from 27/08/2014 to 6/09/2014. It is submitted that a copy of this application was served on the Counsel for the petitioner and thus the petitioner and her Counsel were aware that the respondent would be available in India only during this period and, as such, the ground for absence on account of some alleged erroneous entry in the advocate's diary cannot be accepted.

7. I have considered the rival circumstances and the submissions made. It was alternatively submitted by the learned Counsel for the parties that the respondent is in India and will be going back to London to resume his duty on 15/10/2015. It was thus submitted that this Court may pass appropriate orders so that the cross-examination of the respondent can be completed during this period. The learned Counsel for the petitioner submits and undertakes that the petitioner shall ensure that the cross-examination of the respondent is conducted and completed on or before 9/10/2015. The learned Counsel for the petitioner, on instructions, submits that in the event the petitioner is allowed to cross-examine the respondent, the petitioner does not intend to lead any further evidence in the matter. The said statement is accepted. I find that in the interest of justice and the fact that the respondent is available in India for the aforesaid period and in view of the concession recorded at the bar the following order is passed:

(i) The petition is allowed subject to costs of Rs.5,000/- to be paid to the respondent on or before 5/10/2015.

(ii) The impugned order dated 13/03/2015 as also the order dated 15/09/2014 is hereby set aside.

(iii) The parties to attend the Trial Court on 5/10/2015 at 2.30 p.m.

(iv) The Trial Court shall permit the cross-examination of the respondent on 5/10/2015 or on any other date as may be fixed by the Court till 9/10/2015.

(v) The petitioner shall ensure that the respondent is cross examined on 5/10/2015 or on any other date as may be fixed by the Court, as aforesaid.

(vi) Rule is made absolute in the aforesaid terms with no order as to costs.

C.V. BHADANG, J.

NH/-