

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 428 OF 2015

MR. PUNDALIK KASHINATH GHODE. ... Petitioner
Versus
MR. MOHAMMED ZULFIKAR ALI KHAN. ... Respondent

Mr. S. S. Kakodkar, Advocate for the petitioner.

Coram:- F. M. REIS, J.

Date:- 23rd July, 2015

P.C.:

The above petition takes exception to an order dated 7th March, 2015, passed by the learned Civil Judge, Senior Division at Margao in Regular Civil Suit No. 438/2010/III, whereby an application to take on record a receipt, as well as, a reply to the legal notice sent by the petitioner to the learned Advocate appearing for the respondent came to be rejected.

2. Mr. S. S. Kakodkar, learned Counsel appearing for the petitioner has pointed out that the learned Judge has erroneously passed the impugned order as, according to him, the receipt was very much relied upon by the petitioner and in fact marked "X" for identification in the cross examination of the respondent's witness PW.2. The learned Counsel has further pointed out that the author of the receipt is the petitioner who, according to him, has identified the signatures thereon. The learned Counsel further submits that the

reply to the legal notice was sent to the learned Advocate appearing for the respondent and, in fact, the learned Judge has granted leave to the petitioner to lead secondary evidence thereon. The learned Counsel as such, submits that there is a jurisdictional error, committed by the learned Judge whilst passing the impugned order which calls for interference by this Court under Article 227 of the Constitution.

3. The impugned order, in the present case, only does not take on record the documents relied upon by the petitioner. In such circumstances, interference by this Court under Article 227 of the Constitution, at this stage, would not at all be justified. Apart from that, the learned Judge has noted that such documents can be taken on record only after the petitioner establishes the existence of such documents. In such circumstances, there is no jurisdictional error committed by the learned Judge which would call for interference by this Court under Article 227 of the Constitution. The petitioner, if so advised, can establish the existence of such documents and thereafter move an appropriate application with that regard.

4. Subject to the above, no case is made out for interference by this Court under Article 227 of the Constitution.

5. The petition stands, accordingly, rejected. Liberty to the petitioner to challenge the impugned order if any adverse order is

passed at the time of the final disposal of the suit on merits.

F. M. REIS, J.

ssm.