

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 668 OF 2015

Smt. Mumtaz Bi Sheik,
Wife of Shri Shewik Bilal alias Xec Bilal,
Major of age,
Resident of House No.9,
Near Valpoi Municipal Ground,
Mauxi Road,
Valpoi, Sattari – Goa. Petitioner

V e r s u s

Shri Sheik Bilal alias Xec Bilal,
Major of age,
Son of Shri Sheikh Sarif,
Resident of Ward no.10, house no.97,
City hall Building,
Near Jama Masjid,
Valpoi, Sattari-Goa. Respondent

Mr. Ravi Gawas, Advocate for the Petitioner.
Mr. R. Kudalkar, Advocate for the Respondent.

CORAM: C. V. BHADANG, J.
DATE: 07TH SEPTEMBER, 2015.

ORAL JUDGMENT:

By this petition, the petitioner is challenging the order dated 31/7/2015 passed by the learned Adhoc Civil Judge Senior Division, Bicholim in MP No.7/2007/A. By the impugned order, the application (Exhibit D-69) for recalling PW.1 for the purpose of cross examination has been rejected.

2. The brief facts are that the parties are husband and wife. The

respondent has filed a matrimonial petition for dissolution of marriage against the petitioner in the year 2007. The evidence in the matter had begun on 6/7/2012, when the chief examination of the respondent (PW.1) was recorded. He was cross examined in part and the further cross examination was deferred on 3/8/2012. The matter was kept on 19/10/2012, on which date the petitioner had filed an application for production of documents, which was allowed and the matter was posted for further cross examination on 10/12/2012. On that date, Advocate Shri Navelkar holding for Advocate Shri Desai had sought time which was granted and the matter was adjourned to 18/1/2013. On that date there was no appearance on behalf of the petitioner and the matter was adjourned to 8/2/2013 and thereafter on 15/3/2013. On 15/3/2013, the counsel for the respondent had sought time, which was granted subject to costs of Rs.500/- and the case was fixed on 26/4/2013. The matter was adjourned from time to time thereafter.

3. It appears that on 19/8/2013, the petitioner had filed an application seeking production of documents and hence the matter was adjourned to 25/9/2013 and, thereafter, up to 2/4/2014, on which date the application was allowed and the matter was fixed for evidence on 5/6/2014. The subsequent dates on which the matter was kept are set out in details by the learned Trial Court in the impugned order. Suffice it to mention that earlier that is, on 13/10/2014, on account of absence on behalf of the present petitioner, the

evidence of the respondent was closed and it was fixed for defence evidence on 20/10/2014. On that date, on an application filed by the petitioner, PW.1 was recalled for cross examination. The matter got adjourned to various dates up to 30/1/2015, when the recall was allowed subject to costs of Rs.1000/- and the case was fixed on 27/2/2015. Subsequently the matter got adjourned till 12/6/2015, when on account of the absence of the advocate of the petitioner the matter, was closed for judgment and was kept on 20/6/2015. However, in the later hours on 12/6/2015 itself, the petitioner appeared in person and filed an application (Exhibit 69) for recall, which has been rejected. That is the order which is subject matter of challenge in this Petition.

4. I have heard the learned counsel for the petitioner and the respondent.

5. On hearing the learned counsel for the parties, it hardly needs to be stated that the petitioner has not been diligent in conducting the trial of the petition, expeditiously. There are more occasions than one, when on account of the absence on behalf of the petitioner, the case before the learned Trial Court was required to be adjourned. It was submitted by the learned counsel for the petitioner that the roznama would show that for the entire period from 2012, when the evidence of PW.1 started, the petitioner is not responsible for pendency of the matter, as there were occasions when the petition was

adjourned, not at the instance of the petitioner. Even assuming it to be so, it certainly cannot be said that the petitioner has acted with due expedition in conducting the case and cross examining PW.1. The learned counsel for the petitioner, however, submits that in the interest of justice, one opportunity may be granted and the petitioner shall ensure that PW.1 is cross examined on the next date. Reliance is placed on the decision of this Court in the case of **Mr. Agostinho Godinho Vs. Mrs. Maria Eufrezita Paulina & Ors., reported in 2012 (6) ALL MR 647.** It is submitted that this Court upon relying on the decision of the Hon'ble Supreme Court in the case of **State Bank of India Vs. Chandra Govindji, reported in 2001 (1) ALL MR 765 (S.C).**, had allowed similar request.

It is submitted that the petitioner would abide by any condition including payment of costs, if the petitioner is permitted to cross examine PW.1. It is submitted that if the opportunity of cross examination is not granted, the petitioner would suffer serious prejudice.

6. On the contrary, it is submitted by the learned counsel for the respondent that the petitioner has not been diligent in cross examining PW.1. Alternatively, it is submitted that appropriate orders be passed.

7. In the case of **State Bank of India**(supra) the Hon'ble Apex Court has

held thus in para (7):

“In ascertaining whether a party had reasonable opportunity to put forward his case or not, one should not ordinarily go beyond the date on which adjournment is sought for. The earlier adjournment, if any, granted would certainly be for reasonable grounds and that aspect need not be once again examined if on the date on which adjournment is sought for the party concerned has a reasonable ground. The mere fact that in the past adjournments had been sought for would not be of any materiality. If the adjournment had been sought for on flimsy grounds the same would have been rejected. Therefore, in our view, the High Court as well as the learned District Judge and the Rent Controller have all missed the essence of the matter.”

8. In the case of **Agostinho** (supra), this Court relying upon the judgment of the Apex Court in the case of **State Bank of India**(supra) had granted opportunity to the petitioner to lead evidence. It can be seen that what the Hon'ble Apex Court has said is that one should not '*ordinarily*', go beyond the date on which adjournment is sought, for, while refusing such request. The request for recall has to be considered and decided, in the facts and circumstances of each case. Coming back to the present case, the respondent has filed the petition for dissolution of marriage. Although the petition pertains to the year 2007, the evidence of PW.1 was recorded in the year 2012. A perusal of the dates set out by the learned Trial Court would show that although there were more than one occasions on which there was a lapse on behalf of the petitioner, there were several other dates on which the

petition got adjourned for reasons other than absence or request by the petitioner for such adjournments. This is not to suggest that by itself this would entitle the petitioner to seek recall. However, this can be considered along with the fact that for the entire period for which the petition is pending and for the matter of that the PW.1 is under cross examination, it is not that the petitioner who alone who can be said to be responsible. Considering the overall circumstances and in the interest of justice and to give a fair opportunity to the petitioner, I find that PW.1 can be directed to be recalled subject to costs of Rs.3000/- (Rupees Three thousand only).

9. The petition is accordingly allowed. The impugned order is hereby set aside. The learned Trial Court shall recall PW.1 for cross examination on 14/9/2015 or any other date as may be fixed by the trial Court. The learned counsel for the respondent undertakes to keep PW.1 present on that date. The learned counsel for the petitioner shall ensure that PW.1 is cross examined on the date so fixed. This will be subject to payment of costs of Rs.3000/- (Rupees Three thousand only) to the respondent as a condition precedent. The costs shall be paid on or before 14/9/2015. Rule is made absolute in the aforesaid terms, with no order as to costs.

C. V. BHADANG, J.

Ap/-