

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 665 OF 2015

MR. ASHLEY FERNANDES. ... Petitioner
Versus
MRS. AIDA FERNANDES AND ANR., ... Respondents

Mr. A. P. Cardozo with Mr. M. Menezes D'Souza, Advocates for the
Petitioner.

Coram:- C. V. BHADANG, J.

Date:- 4th September, 2015

P.C.:

Heard Mr. Cardozo, the learned counsel for the petitioner.

2. The petitioner, who is the plaintiff in the suit for damages for malicious prosecution sought relief to produce documents, namely two N.C reports registered with the Police Station Anjuna. Both the NC reports are of the year 2004. The documents were sought to be produced after the plaintiff examined himself. The suit is of the year 2010.

3. The learned Trial Court has found that this was the third application for production of additional documents. The Trial Court has also found that the documents were within the control and reach of the petitioner and no attempt was made to explain as to why the documents were not produced at the first instance or at least before

re-examination of the plaintiff. The petitioner/plaintiff was re-examined on the second attempt to produce the documents which was allowed.

4. It is submitted that the documents were in possession of the earlier counsel of the petitioner. It is submitted that the earlier counsel had not returned the file and as such, the petitioner could not produce the documents earlier. If that be so, the possession of the counsel would obviously tantamount to the possession of the petitioner. Thus it cannot be said that the petitioner was not in control or possession of the documents. In that view of the matter, no exception can be taken to the impugned order dated 7/8/2015 passed by the Civil Judge, Junior Divn., Mapusa, refusing to allow production of the said documents. It is trite that the plaintiff is obliged to act with due expedition. The impugned order does not need any interference, in the exercise of writ jurisdiction. In the result, the writ petition is dismissed.

C. V. BHADANG, J.

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