

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 125 OF 2015

Smt. Divya Dayanand Bhagat,
Proprietor Gargi Pay Phone
and Communication,
C/o Devki Apartments,
H.No.27, Marcel, Ponda Goa.

..... Petitioner

V e r s u s

V.P.K. Urban Co-Operative Credit
Society Ltd., with its head office at
Mardol, Ponda Goa, and extension
counter at Marcela, Goa, duly
represented herein by its recovery Officer,
Mr. Babani Anant Gaude, married,
major in age, service, residing at
Mangueshi, Ponda Goa.

... Respondent

Mr. Shirin V. Naik, Advocate for the petitioner.

None for the respondent though served.

CORAM : K. L. WADANE, J

Judgment Reserved On : 20.10.2015

Judgment Pronounced on : 21.10.2015

JUDGMENT :

Heard Mr. S. Naik, learned counsel appearing for the petitioner. The respondent though served with the notice remained absent.

2. Rule. Heard forthwith.

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3. The present petition is filed by the petitioner/accused seeking to quash and set aside the order passed by the Judicial Magistrate First Class, Ponda, dated 04.09.2015 by which the evidence of the petitioner/accused is closed. Hence, the present Writ Petition.

4. The respondent filed complaint against the petitioner/accused bearing Criminal Case No. 596/2009 for the offence punishable under Section 138 of the Negotiable Instruments Act and it was pending for the evidence of the petitioner. On 04.09.2015, the Advocate of the petitioner filed an application for adjournment seeking time to adduce defence evidence which came to be rejected. On perusal of the reasons recorded by the learned Magistrate, it appears that the application of the petitioner was rejected on the ground that the matter pertains to the year 2009 and two opportunities have already been given to the petitioner to adduce defence evidence and there are general directions for expeditious disposal of the matters. As such, the application was rejected.

5. I have perused the application dated 04.09.2015 in which it is contended that the petitioner was not in possession of the depositions recorded in the previous hearings. Therefore, the Advocate of the petitioner was not able to proceed with the matter. Further, it reveals from record that the earlier Advocate has withdrawn his appearance in the meantime of the next date of hearing fixed on

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28.08.2015 and immediately, the matter was fixed on 04.09.2015. From the contents of the affidavit of Kum. Nitisha Naik, Advocate, it appears that on 04.09.2015, time was sought to adduce defence evidence as a final opportunity. From the record, it appears that the situation arose due to the withdrawal of the appearance by the earlier Advocate and due to which the Advocate subsequently appeared in the matter has no sufficient time to go through the relevant case papers. In such circumstances, I am of the opinion that at least one opportunity should be given to the petitioner to lead her defence evidence. Hence, the Writ Petition is allowed. The impugned order dated 04.09.2015 is hereby quashed and set aside and the petitioner is permitted to adduce her defence evidence before the learned Magistrate. Rule is made absolute in above terms. The Writ Petition stands disposed of accordingly.

K. L. WADANE, J

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