

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 784 OF 2014

Shri Shekar Shamba Karekar,
Son of Shamba Karekar,
Aged 52 years, businessman,
Resident of Flat no. XI, 4th floor,
Near Hari Mandir,
Margao, Goa.

..... Petitioner

V e r s u s

Shri Baburao M. Karekar,
Son of Mangesh Karekar,
Proprietor of B. M.K. Gems and Jewellery,
Major of age, businessman,
Having business at Karekar building,
Feira, Baixa, near Mapusa Municipality,
Mapusa Goa
Resident of H. No. E/1 R.K.
Plaza Dhuler,
Mapusa, Goa.

..... Respondent.

Shri A. D. Bhobe, Advocate for the Appellant/Petitioner.

None for the Respondent.

CORAM: C. V. BHADANG, J.
DATE: 27TH AUGUST, 2015.

ORAL ORDER:

2. On 15/12/2014, a notice was issued to the respondent which was served. However, none appeared. Hence, on 22/4/2015 this Court again

issued a notice indicating that the petition may be disposed of finally at the stage of admission. None appears for the respondent inspite of service of notice. The petition is accordingly taken up for final disposal.

3. The petitioner is the original defendant in a suit filed by the respondent for recovery of an amount of Rs.1,01,875/-. The petitioner was served with a summons of the suit on 4/3/2011 and put in his appearance and sought time to file written statement on 6/4/2009. The suit was thereafter fixed on 29/6/2013, when the petitioner filed an application at Exhibit D-9, seeking extension of time to file written statement. That was rejected by the learned Trial Court, only on the ground that it was objected to on behalf of the respondent. Subsequently, the petitioner filed an application at Exhibit D-10 on 25/7/2013 seeking condonation of delay in filing the written statement. The application was accompanied by written statement. That application is rejected on 28/10/2014. Feeling aggrieved the petitioner is before this Court.

4. According to the petitioner, he is suffering from diabetes and heart ailment. On 6/3/2013, he along with his wife were required to visit Mumbai where their daughter is taking education and her exams were on. The petitioner has set out various reasons in his application for condonation of delay. The same was objected to by the respondent. The learned Trial Court has rejected the application inter alia on the ground that the application was

not supported by a medical certificate and the earlier order dated 29/6/2013, by which the suit was directed to be proceeded without written statement, was not challenged.

5. Heard Shri Bhobe, the learned counsel for the petitioner.

6. The petitioner, along with the order dated 28/10/2014 has also challenged the earlier order dated 29/6/2013 directing the suit to proceed without written statement. A perusal of the said order shows that the only reason given is that the application was opposed. The subsequent order dated 28/10/2014 is based on the earlier order by which the suit was directed to be proceeded without written statement. In either case, it would be appropriate that the suit is decided on merits. I find that the petitioner has made out sufficient cause in the matter. In such circumstances, the impugned orders are hereby set aside. The application at Exhibit D-10 is allowed subject to deposit of costs of Rs.5000/- (Rupees Five thousand only) with the Goa State Legal Services Authority within two weeks from today.

7. The petition is allowed and is disposed of in the aforesaid terms with no order as to costs.

C. V. BHADANG, J.

Ap/-