

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.388 OF 2016**

Mr. Ravindra S. Naidu
Son of Mr. Shriniwas Naidu,
Age 39 years, businessman,
Having office at : CU-1, 2 & 7,
Suvidha Complex,
Near Tilak Maidan,
Vasco-da-Gama, Goa-403 802. ... Petitioner

V/s

1. M/s. Karl Logistics,
Having office at:Second Floor,
B-Block Wing,
Oceanic Commercial Complex,
SGPDA Market Complex,
Margao, Goa.
2. Mr. Lovino Dias,
Major of age,
Partner of M/s. Karl Logistics,
Having office at:Second Floor,
B-Block Wing,
Oceanic Commercial Complex,
SGPDA Market Complex,
Margao, Goa.
3. Anita Dias,
Major of age,
Partner of M/s. Karl Logistics,
Having office at:Second Floor,
B-Block Wing,
Oceanic Commercial Complex,
SGPDA Market Complex,
Margao, Goa. Respondents

Shri T.P. Pereira, Advocate for the Petitioner.

Shri C. Fonseca, Advocate for the Respondents.

CORAM : C.V. BHADANG, J.

DATE : 15th JULY, 2016

ORAL JUDGMENT :

Rule made returnable forthwith. The learned Counsel for the respondent waives service. Heard finally by consent of the parties.

2. The petitioner is challenging the order dated 26/02/2016 below Exhibit 60-D and the order dated 20/01/2016 passed by the learned Civil Judge Senior Division at Vasco in Special Civil Suit No.8/2013/A.

3. By order dated 20/01/2016, the evidence of the petitioner (PW1), who was under cross-examination, was closed, as the petitioner failed to remain present for further cross-examination. The petitioner had filed an application Exhibit 60-D for recall of the order which has been disallowed by order dated 26/02/2016. One of the reasons for this, according to the Trial Court, is that the Court

has become functus officio and if the application Exhibit 60 which was filed under Section 151 of the Civil Procedure Code is allowed, the same would amount to reviewing the earlier order which is not permissible. Such an interpretation cannot be countenanced. In an appropriate case and for a justifiable reason the Court can always recall such an order and strictly speaking this will not amount to review of the order. Be that as it may, according to the petitioner, one of his employees Mr. Dayanand Sail was ill and the petitioner was required to bring Dayanand Sail from Redi port in Maharashtra, for his treatment to Goa. The medical certificate of Dayanand Sail was produced on record which shows that Dayanand Sail Was under the treatment of Dr. Kishore S. Gharse from 19/01/2016 to 20/01/2016 and he was fit to resume duty w.e.f. 21/01/2016. The order closing the evidence was passed on 20/01/2016. The learned Trial Court has found that the medical certificate would run counter to the

claim of the petitioner that he was required to bring Dayanand Sail to Goa on 20/01/2016. The fact remains that there is a medical certificate which shows that Dayanand Sail was under medical treatment from 19/01/2016 to 20/01/2016.

4. I find that in the interest of justice and fair trial, it would not be appropriate to take a technical view of the ground arrayed by the petitioner in support of his application and the petitioner (PW1) can be allowed to complete his evidence subject to condition of payment of appropriate costs.

5. In such circumstances, the following order is passed:

(i) The petition is allowed.

(ii) The impugned orders dated 20/01/2016 and 26/02/2016 are set aside.

(iii) The learned Trial Court shall permit the further cross-examination of PW1 and permit the petitioner to lead further evidence, if any, subject to costs of Rs.20,000/- to be

paid to the respondents within two weeks from today.

(iv) The payment of costs is condition precedent for permitting the PW1 To lead evidence.

(v) The costs shall be paid before the Trial Court.

(vi) Rule is made absolute in the aforesaid terms with no orders as to costs.

C.V. BHADANG, J.

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