

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 110 OF 2016

1. M/s. Ambaal Holdings
B-80, Deyavasandra Industrial Estate,
White Field Road,
Mahadevapura, P. O.
Bangalore 560 048.
2. Mr. Sandeep Agarwal
B-80, Deyavasandra Industrial Estate,
White Field Road,
Mahadevapura, P. O.
Bangalore 560 048.
And residing at
Flat no. 106,
Salarpuria Cambridge Residency,
Ulsoor, Bangalore.

..... Petitioner

V e r s u s

1. Pyramid Finance Private Limited
A Company incorporated under the
Companies Act, 1956, having its
registered office at
Salgaocar House,
Off Francisco Luis Gomes Road,
Vasco da Gama,
Goa 403 802 and
Corporate Office at
Third Floor, Salgaocar Centre,
Rua de Ourem
Panaji, Goa 403 001
Represented herein by its
Duly constituted Attorney
Ms. Leena M. Hede
(Above all are the Regd. addresses)

..... Respondents

Mr. V. Rodrigues, Advocate for the Petitioners.

Ms. Laximi Sawant, Advocate for the Respondents.

Coram :- **F. M. REIS, J**

Date : **20th December, 2016**

ORAL JUDGMENT

Heard Mr. V. Rodrigues, learned Counsel appearing for the Petitioners and Ms. Sawant, learned Counsel appearing for the Respondents.

2. Rule. Heard forthwith with the consent of the learned Counsel. Learned Counsel appearing for the Respondents waives service.

3. The challenge in the above Petition is to Order dated 08.07.2016, whereby the evidence of the Petitioners was closed in view of the absence of the Petitioner on the date fixed for defence evidence.

4. Mr. Vivek Rodrigues, learned Counsel appearing for the Petitioners, submits that though on the earlier occasion the Petitioner failed to remain present, the Petitioner who was an accused in the proceedings initiated by the Respondents for offences punishable under Section 138 of the Negotiable Instruments Act, was absent in view of the marriage of his son, nevertheless on the concerned date i.e. 08.07.2016, the Petitioner could not attend the Court as he had viral fever. Learned Counsel further pointed out that the Medical Certificate in support of the sickness was also produced by the Petitioner but, however, the learned Counsel pointed out that the learned Judge closed the evidence of the Petitioner in view of his absence and also on the ground that costs awarded on the earlier occasion, were not paid by the Petitioner. Learned Counsel further submits that in fact the costs of Rs.2,000/- awarded by the learned J.M.F.C., were paid on 08.07.2016 itself to the Respondent. Learned Counsel further pointed out that as on the concerned date,

there was a sufficient reason for the absence of the Petitioner to seek exemption and proceed with the evidence, the learned Judge was not justified to pass the impugned Order.

5. On the other hand, Ms. Sawant, learned Counsel appearing for the Respondent, submits that ample opportunities were given to the Petitioners and he failed to remain present and, consequently, the learned Judge was justified to pass the impugned Order. The learned Counsel further submits that the proceedings are being delayed in view of the absence of the Petitioner and, as such, directions be issued to the learned J.M.F.C., to dispose of the proceedings within a specific time period.

6. I have considered the submissions of the learned Counsel and I have also gone through the records. It is not disputed that the Petitioner had already paid the costs of Rs.2,000/- as awarded by the learned JMFC for the absence of the Petitioner on the earlier occasion. On the concerned date i.e. 08.07.2016 apparently the Petitioner was sick and in support thereof a Medical Certificate was produced. The contents of the Medical Certificate have not been disputed by the Respondent herein though objections were raised on the ground that the Petitioners were delaying the proceedings. In the peculiar facts and circumstances of the case, as the Petitioner is an accused in the proceedings and, in the interest of justice, I find that it would be appropriate to grant another opportunity to the Petitioner to proceed with his evidence by quashing and setting aside the impugned Order dated 08.07.2016 passed by the learned J.M.F.C., subject to the payment of

costs which are quantified at Rs.3,000/- as condition precedent. The ground for non-appearance is on account of sickness which has not been seriously disputed by the Respondents.

7. In view of the above, I pass the following :

ORDER

(i) The impugned Order dated 08.07.2016 is quashed and set aside.

(ii) The Petitioners are directed to lead their evidence in defence which are stated to be three witnesses before the Learned J.M.F.C., in accordance with law.

(iii) The Petitioners to pay a cost of Rs.3,000/- to the Respondent as condition precedent.

(iv) Rule is made absolute in the above terms.

F .M. REIS, J.

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