

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 743 OF 2016

MRS. EPIFANIA ANGELA SOARES E
FERNANDES.

... Petitioner

Versus

MISS INDIRA ARENA MARTHA MENEZES
AND 3 ORS.,

... Respondents

Mr. Nigel Da Costa Frias, Advocate for the Petitioner.
Mr. Sudin Usgaonkar, Senior Advocate with Ms. T. Ghanekar,
Advocate for the Respondents.

Coram:- F. M. REIS, J.

Date:- 22nd December, 2016

P.C.

Heard Shri Nigel Da Costa Frias, learned Counsel appearing for the Petitioner and Shri Sudin Usgaonkar, learned Senior Advocate appearing for the Respondents.

2. The challenge in the above Petition is to an Order dated 30.07.2015 whereby an application filed by the Petitioner for recall and re-examination of Pw. 2, came to be dismissed.

3. Mr. Nigel Da Costa Frias, learned Counsel appearing for the Petitioner, has pointed out that the Pw. 2 was examined and thereafter cross examined by the Respondents. It is further pointed out that at one place in the cross examination, the witness has stated that she had signed the subject document at

Divar whereas at another place in the same cross examination, the same witness has stated that her signature was obtained by the Plaintiffs at her residence. The learned Counsel further pointed out that to examine such diverse statements, the Petitioners filed an application for recall and re-examination of Pw.2 and immediately on the next date of hearing which came to be rejected. The learned Counsel as such pointed out that there is a jurisdictional error committed by the learned Judge in refusing the application as, according to him, Section 138 of the Evidence Act clearly provides that a party can be called for re-examination for explanation or even for new facts with the permission of the Court. Learned Counsel as such pointed out that there is a jurisdictional error committed by the learned Judge whilst passing such Order and, as such, the application of the Petitioner deserves to be granted to re-examine Pw.2.

4. On the other hand, Shri Sudin Usgaonkar, learned Senior Advocate appearing for the Respondents, has pointed out that it is the contention of the Petitioners that there is a contradiction in the cross examination which has to be corrected but however, according to him, this aspect has to be examined at the stage of appreciating the evidence on record. Learned Senior Counsel further submits that the Petitioners cannot be allowed to fill lacunas in the re-examination as, according to him, the validity of both the statements would be examined by the learned Judge

at the time of the final disposal. Learned Senior Advocate has further pointed out that there is no jurisdictional error committed by the learned Judge whilst passing the impugned Order.

5. I have carefully considered the submissions of the learned Counsel and I have also gone through the records. The very fact that the Petitioners have taken steps to challenge the impugned Order nearly one year after the Order was passed is itself a ground to reject the Petition on ground of laches and delay. Apart from that, the Order is an interlocutory order passed in the course of the proceedings and interference of this Court under Article 227 of the Constitution of India at this stage is very limited. In present case, in case the Court finds that there is any statement to be explained by the concerned witness, the Court has the power under the Civil Procedure Code to recall the witness to explain such statements.

6. In such circumstances, interference at this stage in the impugned Order would not at all be justified as there is no failure of justice which can occasion to the Petitioner in case the impugned Order is allowed to stand. It is for the Court to consider the statements referred to by the Petitioners and on the basis of the appreciation of the evidence on record to take a view in accordance with law.

7. In such circumstances, I find that there is no case made out for interference in the impugned Order passed by the learned Judge. But, however, liberty reserved to the Petitioners to challenge the impugned Order in case any adverse Order is passed against the Petitioners at the time of the final disposed of the Suit on merits.

8. With the above liberty, Petition stands disposed of.

F. M. REIS, J.

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