

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL WRIT PETITION NO. 106 OF 2015**

Mr. Vijaykumar Fadke, s/o Kashinath Fadke, aged 49 years, married, Indian National, r/o F/3, Martin Residency, Borda, Margao, Goa.

.... Petitioner

Versus

M/s Counto Automobiles Pvt. Ltd., A Company incorporated under the Indian Companies Act, 1956, having its registered office at 1st Floor, Sukerkar Mansion, M.G. Road, Panaji, Goa, represented in this Act by its duly Authorized Officer, Mr. Balabhim Vinayaki Upadhye, r/o Flat No. CS-3, Block C, Tamarind Enclave, Corlim, Mapusa, Goa.

.... Respondent

Mr. Ulhas Tari, Advocate for the Petitioner.

Mr. Somnath B. Karpe, Advocate for the Respondent.

CORAM:- S.B. SHUKRE, J.

DATE:- 22nd JANUARY, 2016.

ORAL JUDGMENT:

Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

2. It is seen from the roznama of the Revisional Court that even though summons issued to the respondent had not been returned, the applicant was directed to take steps to serve the respondent. The roznama of 29.06.2015 discloses clearly that notice issued to the respondent had not been returned. Even, as seen from the roznama of the very date of 29.06.2015 as well as of the date of 15.07.2015, the applicant was directed to take steps. Finally, on 05.08.2015, the revision application was dismissed for non prosecution solely on the ground of failure of the applicant to take steps inspite of final opportunity being granted for taking steps to serve the respondent. The question of taking steps to effect service would arise only when summons is returned unserved. For, in that event, the party would come to know the reason for the return of summons and thus would be in a position to take such steps as would be determined by the reason for which the summons has been returned. The impugned order, dismissing the revisions application for want of prosecution is thus arbitrary and illogical. It cannot be sustained in the eyes of the law.

3. Learned Counsel for the respondent, strongly opposes this Criminal Writ Petition contending that, in case, the

matter is remanded to Margao Court, it is going to be a futile exercise as after issuance of the Negotiable Instruments (Amendment), Second Ordinance, 2015, now the Court of Panaji would have jurisdiction in the matter and the revision application before the Sessions Court mainly raises the jurisdictional objection. I must say that this very argument can also be canvassed before the Revisional Court. At this stage, this Court is not required to consider the same for the reason that the revision application is dismissed not on merits of the matter but, only for want of prosecution by the applicant. Therefore, the argument of the learned Counsel for the respondent cannot be accepted.

4. In the result, I find that the Criminal Writ Petition deserves to be allowed and is allowed accordingly. The matter is remanded to Margao Court for disposing it of afresh after hearing both sides, in accordance with law.

Parties to appear before the learned Sessions Judge on 08.02.2016 at 10:00 a.m. Learned Sessions Judge may proceed to finally dispose of the revision application after hearing both the sides on 08.02.2016 or on the date which may not be longer than seven days after 08.02.2016, unless

prevented by some compelling circumstances or reasons. Parties to co-operate with the learned Sessions Judge for finally disposing of the matter and shall not seek any adjournment.

5. Criminal Writ Petition stands disposed of. Rule is made absolute.

S. B. SHUKRE, J.

EV