

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 802 OF 2016

Shri Anthony Joseph Valles,
Major of age, married,
Resident of Vaddem Socorro,
Bardez Goa.

..... Petitioner

V e r s u s

1. Smt. Kamal Manohar Gadekar,
Major of age, widow, resident of
House No.917, Sauntawado,
Calangute, Bardez, Goa.

2. Mr. K. K. Suresh,
R/o H. No. 7/17,
Sautawado, Calangute,
Bardez, Goa.
(All registered addresses)

.... Respondents

Adv. Sudesh Volvoikar for the Petitioner.

Adv. Nigel Da Costa Frias for Respondent no.1.

CORAM: C. V. BHADANG, J.
DATE: 17TH OCTOBER, 2016.

ORAL JUDGMENT:

Rule, made returnable forthwith. The learned counsel for the respondents waives service.

2. The petitioner is challenging the order dated 27/4/2016 (below Exhibit 77) and the order dated 10/8/2016 below application (Exhibit 84 and 85) passed by the learned Civil Judge, Junior Division, Mapusa in Regular Civil Suit no.32/1998/F.

3. The petitioner is the original defendant before the trial Court. The cross examination of PW.1 was closed on 10/2/2016 as the petitioner failed to cross examine the said witness. On 20/3/2016, the petitioner filed an application (Exhibit 77) for permitting to cross examine PW.1. The record shows that on behalf of the respondents/plaintiffs no objection was given for allowing the witness to be cross examined, provided the witness is cross examined, on the same date. The counsel for the petitioner was unable to cross examine on the same date for want of instructions and as the conducting counsel was out of station. In such circumstances the trial Court dismissed the application Exhibit 77 by order dated 27/4/2016. On 8/8/2016, the petitioner filed another application Exhibit 84 for recalling the earlier order dated

27/4/2016. Exhibit 85 was filed to allow the petitioner to file his affidavit in evidence after disposal of his application Exhibit 84. Both these applications Exhibits 84 and 85 have been dismissed by order dated 10/8/2016.

4. On hearing the learned counsel for the parties and perusal of the impugned orders it is apparent that the petitioner has not acted with due expedition in a suit which is of the year 1998. It is however pointed out that in the interregnum the suit was dismissed in default and was restored after a period of 7 years. Even this lapse on the part of the respondents/plaintiffs cannot justify the manner in which the petitioner has conducted himself, firstly when the cross examination of PW1 was closed on 10/2/2016 and thereafter having failed to cross examine the said witness on 20/3/2016 when on behalf of the respondents no objection was given for recalling PW.1. It is only on 10/8/2016 that the petitioner filed an application for recall of the order dated 27/4/2016. However, the learned counsel for the respondents, in all fairness submits that in the event this Court is inclined to permit the petitioner to cross examine

PW.1, the same may be subject to appropriate costs.

5. Although the necessity to expedite disposal of the matters, particularly the old ones, cannot be over-stressed, at the same time, it is always advisable that the matters are decided on merits and after giving a fair chance to the parties to contest the case. Considering the overall circumstances, I find that the petition can be allowed subject to payment of costs. In the result the following order is passed:

ORDER:

- (i) The impugned orders dated 27/4/2016 and 10/8/2016 are hereby set aside.
- (ii) The trial Court shall recall PW.1 for cross examination subject to payment of costs of Rs.20,000/- (Rupees Twenty thousand only) to the respondents on or before 4/11/2016.
- (iii) The respondents shall keep PW.1 present for his cross examination on which date the petitioner shall positively proceed with the cross examination without fail. After closure of the cross examination, the petitioner shall file

his affidavit of examination-in-chief, immediately on the next date as may be fixed by the trial court.

- (iv) Rule is made absolute in the aforesaid terms with no order as to costs.

C. V. BHADANG, J.

ap/-