

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 792 OF 2015**

Mr. Nurallah Kamruddin Veljee,
son of late Kamruddin Veljee,
aged 58 years, residing at Flat No.
701, 'C' Wing, Rizvi Towers,
St.Inez, Panaji, Goa, having office
Opp. River Navigation Dept., near
Tourist Hotel, Panaji, Goa.

.... Petitioner

Versus

Mr. Vishwambhar Kashinath
Palekar, son of Kashinath Palekar,
major, Proprietor of M/s Navdurga
Tailors, Shop No. 11/9/2, Opp.
Hotel Aram, Panaji, Goa.

.... Respondent

Mr. F. E. Noronha, Advocate for the Petitioner.

Mr. Vijay Palekar, Advocate for the Respondent.

CORAM:- S.B. SHUKRE, J.

DATE:- 24th FEBRUARY, 2016.

ORAL JUDGMENT:

Heard. Rule. Rule made returnable forthwith. Heard finally by consent.

2. By this Writ Petition, the petitioner is challenging the order dated 09.07.2015 passed by the Adhoc Civil Judge Senior

Division, B-Court, Panaji, by which the application filed by the petitioner/plaintiff seeking leave of the Court to produce additional documents through his witness has been rejected.

3. The application in question, no doubt, seeks leave of the Court to produce documents through the witness of the petitioner, although, the application ought to have been on the lines as required under the relevant provisions of the C.P.C. The application is not happily drafted, but, would it mean that for such a reason or to be precise, for the mistake attributable to an Advocate of the party, interest of justice should suffer ? and my answer is no.

4. It is now well settled law that the provisions of Order 7 Rule 14 of C.P.C are to be applied not in a technical manner, but, by taking a liberal view. The requirements which were previously there for showing the necessity of production of documents, are no longer there. Now, the provision requires that if the document cannot be produced by the plaintiff and the plaintiff seeks to produce some important document at a later stage, only leave of the Court is required to be taken. The meaning of expression appearing in Order 7 Rule 14(3) of C.P.C.

“a document which ought to be produced in Court by the plaintiff when the plaint is not produced or entered accordingly, shall not without the leave of the Court” has been understood to be having a wider connotation and has been interpreted to indicate the wide nature of discretionary power of the Court exercised for the purpose of determining the real controversy. If the Court is of the view that such documents being produced at a subsequent stage are really required to adjudicate the dispute between parties effectively, the Court would have to exercise its discretion by allowing the production of additional documents. While exercising such a discretionary power, the Court has also to take into consideration the fact of prejudice to the other side. If the Court is of the view that no prejudice would be caused, the discretion must be exercised in favour of the plaintiff seeking benefit of this provision. These principles can also be seen to be laid down in the following cases:-

- i. Smt. Chitrakala Fal Dessai Vs. Shri Balu Marathe alias Mane s/o Jyotiba Marathe, 2006(5) ALL MR 438,
- ii. United India Insurance Co. Pvt. Ltd. Vs. M/s Madgavkar Salvage & Towage Co. Pvt. Ltd., 1995(1) Goa L.T. 1 and

iii. Vittal Govekar (since deceased) through LR's Vs. Madhukar B. Govekar, 1997 (1) Goa L.T. 266.

5. Learned Counsel for the respondent has submitted that the aforesaid cases referred to in the previous paragraph are not applicable to the facts of the present case. I beg to differ with him for the simple reason that although the facts of these cases are different what has been considered and followed by this Court are the principles stated therein.

6. According to learned Counsel for the the respondent, the purpose of Order 7 Rule 14 of C.P.C. or for that matter, Section 153 C.P.C. is not to enable the parties to fill any lacunae in a case. He submits that the application in question has been filed by invoking the power under Section 153 of C.P.C. and since such power cannot be used for assisting the parties to remove a lacuna, the application deserves to be rejected and it has been rightly rejected by the learned trial Court. In support of his submission, he has placed reliance on the case of **Bagai Construction Vs. Gupta Building Material Store**, AIR 2013 SC 1849.

7. No doubt, the application is not happily drafted and does not refer to specific provisions of the Civil Procedure Code under which it has been filed. There is also no quarrel about the principle that provisions of Order 7 Rule 14 of C.P.C. and Section 151 of C.P.C. cannot be allowed to be used for filling up the lacunae, as said in the aforesaid case of **Bagai Construction**, but, at the same time, it cannot be ignored that provision of Order 7 Rule 14 of C.P.C. operate on a much wider plane encapsulating within it all those cases which ultimately go to assist the Court in effectively adjudicating the dispute between the parties. This case is one such case wherein the documents sought to be produced additionally on record are going to assist the Court in doing justice between the parties. The documents which have been sought to be produced are documents of building in question, and they show that the building had some tenants, and one of the tenants was a person named late Yeshwant B. Naik. According to the petitioner/plaintiff, said Yeshwant B. Naik was the original tenant and not the present respondent/defendant. But, it is the case of the respondent that he is the original tenant. In such circumstances, the documents sought to be produced now would go a long way in settling the dispute between the parties

in an effective manner, and therefore, this would not be a case of filling the lacunae. It would be a case of assisting the Court to ascertain the truth. The documents would also help to avoid multiplicity of the proceedings. Therefore, I am of the view that notwithstanding defect in the application, the application filed by the petitioner/plaintiff ought to have allowed by the trial Court. The only ground on which the application has been rejected is that in the opinion of the trial Court, there is no provision of law to rely upon the documents. It appears that the trial Court did not understand the relevancy and importance of these documents and therefore, the application has been rejected on a ground not germane to the controversy involved between the parties. The order is arbitrary and goes against settled principles of law and therefore, needs to be interfered with.

8. In the result, the petition is allowed. The impugned order is quashed and set aside. The application in question (Exhibit- D/54) is allowed. These documents shall be subject to proof in accordance with law. The respondent/defendant shall have liberty to cross examine the witnesses of the petitioner/plaintiff in respect of these documents. All contentions of the parties on admissibility of these documents

are kept open. For the inconvenience caused to the respondents, it would be appropriate to impose cost upon the petitioner, which shall be of Rs.500/- payable by the petitioner to the respondent within two weeks from the date of the order. These documents shall be taken on record and opportunity shall be given to the petitioner/plaintiff to prove them in accordance with law.

9. Rule is made absolute in these terms. No costs.

S. B. SHUKRE, J.

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