

IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO.932 OF 2016.

Ignatius Tony Pereira,
Major in age, Indian National,
Civil Engineer,
r/o 86/D, Baga,
Cansaulim, Goa.

..... Petitioner.

V e r s u s

1. Travel Corporation (India) Pvt. Ltd.,
1st Floor, Citi Center,
19, Patto Plaza, Panaji,
Goa.
2. Mr. Pifran Sanjivan Fernandes,
aged 36 years, Civil Engineer,
R/o Praial, H. No.120,
Cansaulim, Goa.

..... Respondents.

Shri J. J. Mulgaonkar, Advocate for the petitioner.
Shri Sudesh Usgaonkar, Advocate for the respondent no.1.
Shri P. S. Rao, Advocate for the respondent no. 2.

CORAM : F.M. REIS, J.

DATE : 25th November, 2016.

ORAL JUDGMENT

Heard Shri J. Mulgaonkar, learned Counsel appearing for the petitioner, Shri Sudesh Usgaonkar, learned Counsel appearing the respondent no.1 and Shri P. S. Rao, learned Counsel appearing for the respondent no. 2.

2. Rule. Heard forthwith with the consent of the learned Counsel appearing for the respective parties. The learned Counsel appearing for the respondents waive notice.

3. The challenge in the above petition is to an order passed by the learned Civil Judge, Senior Division, Vasco-da-Gama, dated 2.9.2016 whereby the evidence of PW1 came to be closed. It is contended by Shri Mulgaonkar, learned Counsel appearing for the petitioner that in view of the absence of the Advocate on the concerned date, PW1 did not enter the witness box. The learned Counsel further submitted that the delay in completing the evidence was due to an interlocutory orders passed in the suit in connection with the production of the electronically generated documents. The learned Counsel further points out that the petitioner is otherwise being diligent in pursuing the remedy and only on account of the absence of the Advocate on the particular date, the evidence could not proceed. Shri Sudesh Usgaonkar, learned Counsel appearing for the respondent no.1 has taken me through the records of the suit to point out that the petitioner has been unnecessarily dragging the matter and on the previous date of hearing, when the adjournment was sought by the petitioner, it was clearly

stated that no adjournment would be granted on the subsequent date i.e.2.9.2016 and in default the evidence would be closed. The learned Counsel further points out that as there was no justifiable ground to adjourn the matter on 2.9.2016, the learned Judge was justified to pass the impugned order.

4. Mr. Rao, learned Counsel appearing for the respondent no.2 points out that the suit itself is frivolous, as according to him, Arbitration Proceedings are pending before the Arbitrator in connection with the distribution of the assets between the petitioner and the respondent no.2.

5. I have duly considered the submissions of the learned Counsel and the I have also gone through the records.

6. No doubt the records reveal that the petitioner has been seeking adjournment which the learned Judge granted on the earlier occasion. But however, the records clearly show that on the previous date it was recorded that in case the evidence did not proceed on 2.9.2016 the evidence of the petitioner would be liable to be closed. The contention of the petitioner is that on account of negligence, inaction on the part of the

Advocate to appear on the particular date the evidence could not be recoded. Though this reason cannot be over emphasized to justify the conduct of the Advocate, nevertheless, in the peculiar facts and circumstances of the case, as it is pointed out that there are parallel proceedings pending between the petitioner and the respondent no.2 in connection with the assets of the partnership firm, I find that as a last opportunity the petitioner be given liberty to proceed with the evidence subject to the payment of exemplary costs of ₹10,000/- each to the respondent no.1 and the respondent no.2 respectively. It is made clear that in case the petitioner does not proceed to lead evidence on the date fixed by the learned Judge, it would be open to the learned Judge to take appropriate measures in accordance with law.

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

ORDER

- (i) The impugned order dated 2.9.2016 is quashed and set aside.
- (ii) The petitioner is permitted to lead evidence on the date fixed by the learned Judge and proceed to record further evidence in accordance with law

subject to the petitioner paying costs of Rs.10,000/-
each to the respondent no.1 and the respondent no.2
respectively as a condition precedent.

(iii) Rule is made absolute in above terms.

F.M. REIS, J.

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