

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.216 OF 2017**

Mr. Ratikant N. Mandrekar,
aged 64 years, Indian National,
resident of Flat Nos.263 & 264
Landscape, Campal, Panaji, Goa .. Petitioner

Vs

Dempo Trade Centre Office
Space Owners Association,
represented by its General
Secretary, Dempo Trade
Centre, Patto Plaza,
Panaji-Goa .. Respondents

Mr. Rohit Bras De Sa, Advocate for the petitioner.

Mr. Aldrin Monteiro, Advocate for the respondent.

Coram :- M. S. SONAK, J.

DATE :- 19nd April, 2017

ORAL JUDGMENT :-

Heard Mr. Bras De Sa for the petitioner and Mr. A.
Monteiro for the respondent.

2. Rule. Rule is made returnable forthwith, with the
consent of the learned Counsel for the parties.

3. The challenge in this petition is to the order dated 31/01/2017, made by the learned District Judge, North Goa, Panaji, dismissing the petitioner's application for extension of time to pay a costs of Rs.5,000/-, as a result of which, the petitioner's appeal from order stands dismissed.

4. Earlier, the learned District Judge, after noting that the petitioner was unduly protracting the matter, including by way of seeking more than six adjournments, had imposed costs of Rs.20,000/- upon the petitioner for seeking 7th adjournment.

5. The petitioner thereupon instituted Writ Petition No.854/2015, which was disposed of by this Court by an order dated 27/11/2015 and the amount of costs was reduced from Rs.20,000/- to Rs.5,000/-. There was a specific direction that such costs had to be paid to the respondent on or before the next date of hearing before the learned District Judge. There was a default in compliance. However, Mr. De Sa points out that an application for extension of time was made along with Demand Draft in an amount of Rs.5,000/-. Later on, it was realised that since the time limit had been issued by this Court, it would be appropriate if this Court is moved for extension of time. Accordingly, an application to the said effect was taken out in the disposed of

W.P.No.854/2015. Before such an application could be disposed of, the appeal itself was dismissed on the ground of non-compliance with the directions with regard to payment of costs.

6. The petitioner then took out Civil Miscellaneous Application No.134/2016, seeking for restoration of the appeal. By the impugned order dated 31/01/2017, this Civil Miscellaneous Application has been dismissed.

7. There is no doubt negligence on the part of the petitioner. The petitioner was suitably indulged by reduction of costs of Rs.20,000/- to Rs.5,000/-. Despite all this, the petitioner failed to avail benefit of such indulgence. The record does indicate that the petitioner has sought for several adjournments in the matter. In such a situation, it was made clear to the petitioner that in case the petitioner seeks for yet another opportunity in the matter, the petitioner would be ready and willing to pay costs of Rs.25,000/- on this occasion. The matter was adjourned in order to enable Mr. De Sa, the learned Counsel for the petitioner to obtain instructions in the matter. Today when the matter was called out, Mr. De Sa on the basis of the instructions from the petitioner, states that the petitioner will pay costs of Rs.25,000/- to the respondents. However, Mr. De Sa points out that there are

certain mitigating circumstances and further, if such mitigating circumstances are not to be considered, at least, six weeks' time may be granted for the payment of such costs. Mr. De Sa submits that the mitigating circumstances are that an application for extension had been made not only before the learned District Judge, but also before this Court. This in my opinion, is hardly a mitigating circumstance. After having obtained an order for reduction of the costs, the payment of reduced costs ought to have been made without further delay. However, the plea that six weeks' time be granted for payment of costs can be accepted taking into consideration the submission of Mr. De Sa that the petitioner is a senior citizen.

8. Accordingly, the impugned order dated 31/01/2017 is set aside. Civil Miscellaneous Application No.134/2016 taken out by the petitioner seeking restoration of the Miscellaneous Civil Appeal No.61/2013 is allowed and the appeal is restored to the file of the learned District Judge. All this is subject to the petitioner paying to the respondent costs of Rs.25,000/- on or before 12/06/2017. In case the amount of costs are deposited before the learned District Court on or before 12/06/2017, the petitioner's appeal shall stand restored. In case there is any default for whatsoever reason, the petitioner shall not have the benefit of this

order and the impugned order shall be deemed to have been upheld. If the petitioner chooses to deposit the costs before the learned District Judge, the respondent shall be at liberty to withdraw the same unconditionally.

9. The registry of the learned District Judge to return to the petitioner the Demand Draft dated 07/04/2016 furnished by the petitioner along with the application dated 11/04/2016 since, by now, its validity period has already expired.

10. The learned District Judge to dispose of the appeal on its own merits and in accordance with law.

11. Rule is made absolute in the aforesaid terms, with costs.

SMA

M. S. SONAK, J.