

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 332 OF 2017**

Mr. Reggie Fernandes,
47 years of age, married,
Businessman,
resident of H. No.106,
Cruchawado, Siolim, Bardez Goa.
Presently residing at House No.10,
Anthony Villa,
Pakadi Lane, Versova,
Andheri, West, Mumbai 400061. ... Petitioner

Versus

Miss Shanta C. Kolvalkar,
Aged 45 years, Spinster,
B-6, Villa Verdes,
Behind Sagar Hotel,
Alto Porvorim,
Teen Building, Porvorim,
Bardez Goa. ... Respondent

Mr. V. Palekar, Advocate for the petitioner.

Respondent present in person.

Coram:- F. M. REIS, J.

Date:- 7th April, 2017

ORAL JUDGMENT

Heard Mr. V. Palekar, learned counsel appearing for

the petitioner and the respondent in person.

2. Rule. Heard forthwith.

3. The respondent in person waives service.

4. The challenge in the above petition is to an order passed by the learned Civil Judge Junior Division, Mapusa, dated 15.03.2017 whereby the evidence of the petitioner who is defendant in the suit was closed and the matter was posted for final hearing.

5. Mr. V. Palekar, learned counsel appearing for the petitioner points out that on the relevant date i.e. on 20.02.2017 when the matter was posted for evidence, the petitioner filed the affidavit in evidence and was prepared for cross examination but however the matter could not be taken up for want of time. The learned counsel further pointed out that the date was thereafter fixed on 15.03.2017 when co-incidentally the petitioner was called upon a Sessions Proceeding to appear before the

Police Station at Mumbai which prevented the petitioner to appear before the learned Trial Judge. The learned counsel further submits that the learned Judge by the impugned order dated 15.03.2017 refused adjournment and closed the evidence of the petitioner. The learned counsel as such points out that grave injustice would occasion to the petitioner which call for interference of this Court under Article 227 of the Constitution of India.

6. On the other hand, the respondent in person has filed an affidavit in reply and pointed out that the petitioner has the habit of raising false and frivolous contentions. It is further pointed out that the petitioner is involved in several serious cases in Goa as well as in Mumbai and falsely contending that he was not available on the relevant date. It is further pointed out that the suit was filed by the respondent for the recovery of an amount of over Rs.11,00,000/- and grave prejudice would occasion to the respondent in case this Court interfered with the impugned order. The respondent as such points out that the petition be rejected.

7. I have considered the submissions of the learned counsel and I have also gone through the records. Though on the earlier occasion, the petitioner was given an opportunity to lead evidence subject to the payment of costs, nevertheless, it appears that the petitioner took a date when the petitioner was thereafter directed to be in Mumbai in connection with some criminal investigation. It is however pointed out by the learned counsel appearing for the petitioner that such date was fixed only after the petitioner otherwise appeared before the Court on 20.02.2017. The fact that the petitioner had to appear before the police station on the relevant date is not in dispute. Though the petitioner has defaulted in appearing in the suit when the matter was posted for hearing nevertheless, in the peculiar facts and circumstances of the case and considering that on the relevant date i.e. on 15.03.2017, there was prima facie, a bonafide reason to get an adjournment, I find that the petitioner can be given another last and final opportunity to lead his evidence in the suit subject to payment of costs which are quantified at Rs.10,000/- to be paid to the respondent as condition precedent.

8. In view of the above, I pass the following :

ORDER

(i) The impugned order dated 15.03.2017 is quashed and set aside subject to the petitioner paying costs of Rs.10,000/- to the respondent as condition precedent.

(ii) The learned Judge shall proceed to permit the petitioner to lead defence evidence and produce the documents and proceed to dispose of the suit in accordance with law.

(iii) Rule is made absolute in the above terms.

(iv) The petition stands disposed of accordingly.

F. M. REIS, J.

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