

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 991 OF 2016**

Mr. Reggie Fernandes,
47 years of age, married,
Business resident of H.No.106,
Crucha wado, Siolim, Bardez, Goa,
Presently residing at house no.10,
Anthony Villa, Pakadi Lane, Versova,
Andheri, West, Mumbai 400 06

..... Petitioner
(Original Defendant)

V e r s u s

Miss Shanta C. Khovalkar,
Aged 45 years, Spinster,
B-6, Villa Verdes,
Behind Sagar Hotel,
Alto Porvorim, Teen Building,
Porvorim, Bardez Goa.
(All Registered Addresses)

..... Respondent
(Original Plaintiff)

Shri Ravi Gawas, Advocate for the Petitioner.

Respondent in person.

CORAM: C. V. BHADANG, J.
DATE: 6th February, 2017.

ORAL JUDGMENT:

Rule. The respondent is present in person. The parties are heard. Considering the short question involved

the petition is being disposed off finally by consent of parties.

2. The petitioner who is the defendant in R.C.S. No.53/2012/F on the file of the learned Civil Judge, Junior Division, Mapusa, is challenging the order dated 26/9/2016 by which the application for adjournment filed by the petitioner has been rejected and the evidence of the petitioner has been closed.

3. The suit is for recovery of an amount of Rs.11,15,000/-.

4. It appears from the copies of order sheets produced on record that the evidence of the petitioner was earlier closed by an order dated 4/12/2015. The said order was recalled on 4/1/2016 subject to certain conditions including the payment of costs of Rs.5000/-, which have been deposited by the petitioner on 17/2/2016. The suit was peremptorily fixed for the evidence of the petitioner on 11/1/2016 on which date the Presiding Officer was on leave and the suit was adjourned

on 25/1/2016, on which date again on account of Presiding Officer being on leave, the suit was adjourned to 17/2/2016 on 17/2/2016 an application for leading secondary evidence was filed on behalf of the petitioner which was rejected on 16/3/2016. The suit was thereafter fixed on 22/6/2016, however again it was adjourned on account of the Presiding Officer being on leave. On 22/7/2016, the suit was adjourned as the trial court was recording evidence in some other suit and the present suit was fixed on 26/9/2016. On that date, an application Exhibit D-44 was filed on behalf of the petitioner seeking adjournment on the ground of his ill health and inability to come down to Goa on account of cancellation of trains.

5. The learned trial Court has found that the application was not supported by a medical certificate nor showing that the train booking was cancelled by the petitioner. It has also been found that the petitioner has not filed the list of witnesses. It is in these circumstances, that the application came to be rejected.

6. The respondent, who appears in person states that the petitioner is usually coming to Goa, however he is intentionally trying to prolong the suit.

7. I have considered the facts and circumstances and the submissions made. It appears that after the earlier order closing the evidence was recalled on 4/1/2016, at least on three occasions the suit was adjourned on account of the Presiding Officer being on leave and on one occasion as the Court was busy in recording evidence on some other suit. On 17/2/2016, it was adjourned on account an application for secondary evidence being filed which was rejected on the next date i.e. on 16/3/2016. The petitioner has now produced a medical certificate on record to show that the petitioner was advised rest between 27/9/2016 to 1/10/2016. Be that as it may, considering the overall circumstances, I find that in the interest of justice and fair trial, an opportunity needs to be granted to the petitioner subject to payment of costs of Rs.10,000/- (Rupees ten

thousand only). The petition is thus allowed. The impugned order is hereby set aside subject to the petitioner paying costs of Rs.10,000/- to the respondent within two weeks from today. The parties to appear before the trial Court on 20/2/2017 at 10 a.m.. The learned counsel for the petitioner undertakes that the petitioner shall remain present and shall not seek further adjournment in the suit. Rule is made absolute in the aforesaid terms with no order as to costs.

C. V. BHADANG, J.

Ap/

