

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 128 OF 2018

RESOURCES INTERNATIONAL, REP. BY
ITS PARTNER, DIPAK M. RAJANI, ... Petitioner

Versus

JOHN FILLIPE COSTA AND 2 ORS., ... Respondents

Shri Joaquim Godinho, Advocate for the petitioner.

Shri Ryan Da Piedade Menezes, Advocate for the respondent
Nos.1 & 2.

Coram:- NUTAN D. SARDESSAI, J.

Date:- 19th March 2018

ORAL ORDER :

Heard Shri J. Godinho, learned petitioner who invited attention to the First Appellate Court's Order dated 02/12/2016 pursuant to which the petitioner as the Original Defendant No.1 was allowed to step in the witness box and lead evidence in respect of the amended written statement and exhibit the documents. This order dated 02/12/2016 had not been reversed or modified in the review application filed at the instance of the respondents and quite on the contrary the application for review was dismissed. However, pursuant to an application made by him dated 31/10/2017, the learned Appellate Court passed the impugned order dated 07/12/2017 pursuant to which his relief earlier granted had been wiped out and that his application had

been dismissed in its totality with no order as to costs. He therefore pressed for quashing and setting aside the order under challenge.

2. Shri R. Menezes, learned Advocate submitted that there was no infirmity with the impugned order as much as it rejected the prayer in the application dated 31/10/2017, but vitally not taking away the order in his favour dated 02/12/2016.

3. i have considered their submissions and besides perused the order under challenge apart from the order dated 02/12/2016 and that in the review application dated 18/08/2017. At the cost of repetition, the petitioner herein was granted leave to step in the witness box and lead evidence in respect of the amended written statement and permitted to execute the documents in support of his case. This order which was sought to be reviewed at the instance of the respondent met with failure inasmuch as the review application came to be dismissed against the respondent Nos.1 and 2. The learned District Judge however pursuant to the application made by the petitioner herein dated 31/12/2017 by the impugned order and while considering its earlier order dated 02/12/2016 made a complete violence to the same by not considering the reliefs claimed in the application and dismissed the same in toto with no order as to costs. In view thereof, the order under challenge cannot be allowed to stand on any legal

premise. The impugned order is therefore quashed and set aside with a direction to the learned District Judge to comply with the order dated 02/12/2016 and permit the petitioner herein to lead evidence based on the amended written statement and produce the documents which were earlier permitted in terms of Order XLI Rule 27 C.P.C.

4. The petition stands disposed off with no order as to costs.

NUTAN D. SARDESSAI, J.

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