

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 444 OF 2018**

1. M/s. R & C Turnkey Projects Ltd.,
4/203, Pawan Baug,
S. V. Road,
Malad (West),
Mumbai-400 064.

2. The Managing Director,
Mr. M. D. Chand,
M/s. R & C Turnkey Projects Ltd.,
4/203, Pawan Baug,
S. V. Road, Malad (West),
Mumbai – 400 064.

.... Petitioners.

V e r s u s

Shri K. N. Soman Nair,
Son of K. Narayanan Nair,
Aged about 55 years,
Indian National,
Resident of H. No. 670/2,
Airport Mangor Hill Road,
Shantinagar,
Vasco da Gama, Goa,
Proprietor M/s. K.N.S. Enterprises,
Having Office at H. No.670/2,
Airport Mangor Hill Road,
Shantinagar,
Vasco da Gama, Goa.

..... Respondents.

Adv. Pranay A Kamat for the Petitioners.
Adv. Gaurish N. Agni for Respondent no.1.

Coram:- C. V. BHADANG, J.

Date:- 13th June 2018.

ORAL JUDGMENT:

Rule, made returnable forthwith. The learned counsel for the first respondent waives service. Heard finally by consent of parties.

2. The petitioner is challenging the order dated 3/7/2017 passed by the learned trial court refusing to recall PW.1 and permitting the petitioner to cross examine the said witness.

3. On hearing the learned counsel for the parties and on perusal of the record it appears that the petitioner certainly could have acted with greater expedition in the matter. It appears that the learned trial court had granted three adjournments and at the end of which the learned counsel appearing for the petitioner had informed that he has no instructions and had withdrawn appearance. Thereafter the successor advocate who appeared took time to file his vakalatnama. Eventually the application was filed on 28/9/2016 for recalling the order closing the cross examination of the PW.1 which was dismissed on 3/7/2017. The learned counsel for the respondent has pointed out that the petitioner took about five months to approach this Court after passing of the impugned order.

4. Considering the overall circumstances and having regard to the fact

that the petitioner cannot be made to suffer for the lapse on the part of their advocate and in the interest of justice, the petition is allowed. The impugned order is hereby set aside subject to the petitioner paying costs of Rs.25,000/- (Rupees twenty five thousand only) to the respondent within two weeks from today. The payment/deposit of the costs is a condition precedent for permitting the petitioner to cross examine PW.1. On payment/deposit of costs, the learned trial court shall recall PW.1, who shall be permitted to be cross examined on behalf of the petitioner.

5. The petitioner is directed to ensure that PW.1 is cross examined on the next date or on any other date to which the trial is adjourned and no further adjournment shall be sought for.

6. Rule is made absolute in the aforesaid terms.

C. V. BHADANG, J.

ap/-