

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.394 of 2018**

R & H Spaces Pvt. Ltd.,
A Company registered under
the Companies Act, 2013,
Having registered office
address at 215, Atrium, 10th
Floor, next to Courtyard by Marriot
Hotel, Opp. Divine Child High
School, Andheri Kurla Road,
Andheri (E) Mumbai 400 059,
Represented through its
authorized employee Mr. Shivaji
Desai, Having registered office
address at 215, Atrium, 10th floor,
next to Courtyard by Marriot
Hotel, Opp. Divine Child High
School Andheri Kurla Road,
Andheri (E)
Mumbai 400 059. .. Petitioner.

Vs.

1. The State of Goa
Represented through Chief
Secretary Porvorim, Bardez Goa
2. The Office of the District Magistrate
North Goa, Magisterial Branch,
Collectorate Bldg.,
Panaji Goa
3. Mr. Anthony Joseph D'Souza
Major of age, resident of H. No.1193,
Ans waddo, Ximmer, Candolim
Bardez Goa. .. Respondents.

Shri Vivek Rodrigues, Advocate for the Petitioner.

Shri Rajesh Shivolkar, Additional Government Advocate for the
Respondent Nos. 1 and 2.

Respondent no.3 in person.

CORAM :- C. V. BHADANG, J.

Date : 11th June, 2018

ORAL JUDGMENT :

Reply filed by the respondent no.3, who appears in person, is taken on record.

2. Rule made returnable forthwith. The learned Additional Government Advocate waives service for the respondent nos.1 and 2. Respondent no.3 is present in person.

3. I have heard the learned Counsel for the petitioner and the learned Additional Government Advocate for the respondent nos.1 and 2 and the respondent no.3 in person.

4. On hearing the learned Counsel for the parties and on perusal of the record, it is not clear as to under which provision the impugned order has been passed by the learned District Magistrate.

5. According to the learned Counsel for the petitioner, even if it is assumed that the order is passed under Section 133 of Cr.P.C., it is contended that neither the petitioner has been heard nor the learned Additional District Magistrate passed conditional

order before passing the final order.

6. The learned Additional Government Advocate submits that the order is passed under Section 117 of the Motor Vehicles Act. The learned Additional Government Advocate states that in the event this Court is inclined to set aside the order, the petitioner shall be heard and thereafter appropriate order as may be necessary, shall be passed.

7. Be that as it may, the fact remains that admittedly, the petitioner was not heard before passing of the impugned order. In such circumstances, the following order is passed :

- (i) The petition is allowed.
- (ii) The impugned order is hereby set aside.
- (iii) It will be open to the District Magistrate to hear the petitioner as well as the third respondent and then pass appropriate orders as may be necessary, in accordance with law.
- (iv) Rival contentions of the parties are left open.
- (v) Rule is made absolute in the aforesaid terms, with no order as to costs.

C. V. BHADANG, J.