

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.618 of 2018**

George Veerampully
S/o Porinchu Veerampully,
Age 61 years, married, business,
Resident of H No.247/5,
Churchstreet, Cortalim &
running his carpentry Business
at shop no.435, or House
No.963, opposite to Dr. Kamat
Office, Novo Palmar Cortalim,
Mormugao, Goa. .. Petitioner

Vs.

Shri Pandurang Damu Kamat
Son of late Damu Kamat,
Aged 61 years, married business,
Resident of H.No. not known
Novopalmar Cortalim,
Mormugao, Goa. .. Respondent.

Shri D. Vernekar, Advocate for the petitioner.

Shri R. G. Ramani and Shri P. Kakodkar, Advocates for the respondent.

CORAM :- C. V. BHADANG, J.

Date : 27th July, 2018

ORAL JUDGMENT :

Rule, made returnable forthwith. Shri Ramani, the learned Counsel for the respondent waives service. Heard finally by consent of parties.

2. The petitioner is the plaintiff in Regular Civil Suit

No.51/2012, pending before the Senior Civil Judge at Vasco. The petitioner had entered into witness box and his chief-examination was being recorded. On 12/02/2018, Advocate for the petitioner could not attend the Court for the reason that there was a Taxi strike on the said day. The petitioner, who appeared in person, sought time, which was refused and the evidence of the petitioner was closed. Subsequently, the petitioner filed an application Exh.88 for recall of the order of closure of evidence, which has been dismissed on 04/04/2018. Hence, this petition.

3. I have heard Shri Vernekar, the learned Counsel for the petitioner and Shri Ramani, the learned Counsel for the respondent.

4. Although there was some debate during the course of arguments at bar as to whether there was any Taxi strike on 12/02/2018, as claimed on behalf of the petitioner, it is not disputed that the Advocate for the petitioner did not remain present on 12/02/2018, on which day, the evidence of the petitioner was closed. The learned Trial Court has noticed that the suit is more than five years old and the general approach of the petitioner in conduct of the trial, has been casual. The application for recall of the order is dismissed by the impugned order dated 04/04/2018 on the ground that the Court cannot recall

the same and the remedy if any of the petitioner lies elsewhere. Without going into the question whether the Trial Court could have recalled the order dated 12/02/2018 and considering the fact that the petitioner was precluded from leading his evidence on 12/02/2018 on account of the absence of his Advocate and in the interest of justice, I find that an opportunity needs to be granted to the petitioner to lead evidence. It is trite that the Court would normally prefer a decision on merits than on technicality. The respondent can be appropriately compensated by way of costs. Hence, the following order is passed :

ORDER

- (i) The petition is allowed.
- (ii) The impugned order dated 12/02/2018 and the order dated 04/04/2018 are hereby set aside, subject to costs of Rs.10,000/-, payable by the petitioner to the respondent on or before 13/08/2018.
- (iii) The payment/ deposit of the costs is condition precedent for setting aside the impugned order. On deposit of the costs, the petitioner shall be permitted to lead his further evidence in the suit.
- (iv) Rule is made absolute in the aforesaid terms.

C. V. BHADANG, J.