

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 1133 OF 2017

**SHREM ANIRUDDHA POWER PVT. LD.,
REP. BY ITS AUT. REP., REMUN RAJ
BHUTANI.,**

... Petitioner

Versus

**WILSON PETER SANTAN FERNANDES @
WILSON FERNANDES AND ANR.,**

... Respondents

Shri Shivan Desai, Advocate for the petitioner.
Shri Nigel Da Costa Frias, Advocate for the respondent No.1.

Coram:- C. V. BHADANG, J.

Date:- 26th April 2018

P.C.

The challenge in this petition is to the order dated 19/09/2017 below Exh.D-8, passed by the learned Trial Court in Special Civil Suit No.35/2012/A. By the impugned order, the learned Trial Court has dismissed the application Exh.D-8, which was filed for permission to take Written Statement on record.

2. According to the petitioner, its office is at Mumbai and one of the staff members Mr. Vaibhav Tiwari was instructed to inform the petitioner's representative Remun Raj Bhutani, who manages Goa operations, in the event any notice/ correspondence of any nature is received. It is contended that the petitioner has challenged the Deed of Rectification purportedly executed by the respondent no.2 (defendant no.1) in favour of the respondent no.1 (plaintiff) in the Special Civil Suit No.2/2013, which is

pending in the Court of the learned Senior Civil Judge of Mapusa. In so far as the present suit is concerned, it was pointed out that there was some miss-communication between Mr. Remun Raj Bhutani and Mr. Vaibhav Tiwari about the receipt of the notice in Special Civil Suit No.35/2012/A.

3. Indisputably, the petitioner put in appearance, in the suit through his Advocate on 13/02/2013. However, the application for permission to file the written statement was only filed in April, 2013. The petitioner had sought permission to take the written statement on record, which was filed beyond the period of 90 days.

4. The application was opposed on behalf of the respondent no.1 (plaintiff).

5. The learned Trial Court, by the impugned order, has dismissed the application.

6. I have heard Shri Desai, the learned Counsel for the petitioner and Shri Costa Frias, the learned Counsel for the respondent no.1 and perused record.

7. The learned Trial Court has found that the petitioner, not having filed any application for extension on 13/02/2013, shows gross negligence on the part of the petitioner and, therefore, discretion could not be exercised in favour of the petitioner. It is true that there is delay in the matter of filing of the written statement by the petitioner. However, the question of granting leave to file written statement beyond the period of 90 days, can

only arise where there is delay and not otherwise. There is no presumption that the delay is intentional and no party stands to gain by such delay. Although it cannot be disputed that there is some delay on the part of the petitioner in filing written statement, it is not possible to accept that there is gross negligence or laches on the part of the petitioner.

8. Considering the overall circumstances and in the interest of justice and fair trial, the application can be granted, subject to payment of costs.

9. In the result, the following order is passed :

The petition is allowed. The impugned order is hereby set aside. The application Exh-D-8 is allowed, subject to payment of costs of Rs.10,000/- to the respondent no.1 within two weeks from today. The petition is disposed of, in the aforesaid terms, with no order as to costs.

C. V. BHADANG, J.

SMA