

IN THE HIGH COURT OF BOMBAY AT GOA**Writ Petition No.1086/2017**

M/S CASA PORTUGUESA, REP.BY ITS POA,
FRANCIS FERNANDES.

PETITIONER

VERSUS

REGIONAL DIRECTOR, EMPLOYEES STATE
INSURANCE CORPORATION.,

RESPONDENT

Mr. Vijay Palekar, Advocate for the petitioner.
Mrs. A. Agni, Senior Advocate with Mr. Akshay Naik,
Advocate for the respondent.

CORAM : PRITHVIRAJ K.CHAVAN, J.
ORDER RESERVED ON : 02.02.2018
ORDER PRONOUNCED ON :08.02.2018.

ORDER:

1. The petitioner challenges the orders dated 14.11.2017 and 19.11.2017 passed by the Principal District Judge, North Goa, Panaji by invoking the jurisdiction of this Court under Article 227 of the Constitution of India.

2. The petitioner is a small establishment running a restaurant, which conducts business only during tourist season. The respondent has sought to extend the provisions of the Employees State Insurance Act to the petitioner establishment and, therefore, he raised a

dispute before the Employees Insurance Court by filing an application bearing ESI Case No.5/2008, *inter alia*, prayed for declaration that its business is not covered under the provisions of the Employees State Insurance Act, 1948.

3. On 28.9.2017 evidence of first witness was concluded and thereafter the matter was fixed for recording of evidence of other witnesses. It is stated that on 1st November, 2017 copies of affidavit in the evidence of the witnesses, which were sought to be examined by the petitioner were furnished to the respondent's counsel. The matter was thereafter fixed on 14.11.2017 for cross-examination of the witnesses.

4. Since the petitioner's Advocate was held up in the High Court in a matter that was listed for hearing, he could not attend the trial Court though the witnesses were ready. Since the Advocate could not appear before the learned Principle District Judge despite repeated calls and since no application for adjournment was also moved, the impugned orders came to be passed by the learned Principal District Judge.

5. It would be apposite to reproduce the impugned orders dated 14.11.2017 and 29.11.2017:

"Dt.14.11.17: Called out today. Applicant Represented by Adv. P.Gawas. Respondent No.1 represented By Adv.D.Govekar. Newly added parties i.e. Respondent No.20 to 10 exparte.

On 11/10/2017 witness of the applicant was absent and an opportunity was given. On 1.11.2017 again time was sought, time was granted. Today witness is again absent. This is the matter of 2008. Learned Adv.D.Govekar strongly objects on the ground that it is an old case and enough opportunities was given to the applicant. Record shows that applicant started examining witness on 28.9.2017. Applicants are delaying the proceedings. Application for adjournment also not filed today and hence the grounds of adjournment are not made out. Hence applicants evidence stands closed.

Stands over for Respondents Evidence on".

Dt.29.11.17 : This is the case of the year 2008. After examining PW 1 in September, 2009 the Applicant prayed for time. On 14.11.2017 evidence of Applicant was closed by passing reasoned order. Order of closing of evidence was closed as the witness was absent. Said order is not challenge by the Applicant. In view of above the application for recall of order dated 14.11.2017 stands dismissed".

6. The only argument advanced by the learned counsel for the petitioner is that the learned Principal District Judge has failed to exercise his powers under Section 151 of the Code of Civil Procedure and, therefore, the matter needs to be remanded to the learned Principal

District Judge to decide it in view of Section 151 of the CPC. The learned counsel for the petitioner does not dispute the facts stated in the impugned orders dated 14.11.2017 as well as 29.11.2017 and, therefore, there is absolutely no reason to interfere in the said orders that too, under Article 227 of the Constitution of India, as there is neither any improper exercise of jurisdiction nor grave dereliction of duty or that the orders are passed in flagrant abuse of fundamental principles of law or justice. Merely observing in the impugned order dated 29.11.2017 that the order dated 14.11.2017 was not challenged by the petitioner does not give him a right to seek directions to exercise the powers under Section 151 of CPC by the learned Principal District Judge.

7. The learned counsel for the respondent has rightly placed a useful reliance on a authority of the Hon'ble Supreme Court in case of **Municipal Corporation of Delhi Vs. Jai Singh and others** reported in **(2010) 9 SCC 385**. Para 15 of the authority reads thus:

"15.We have anxiously considered the submissions of the learned counsel. Before we consider the factual and legal issues involved herein, we may notice certain well recognized

principles governing the exercise of jurisdiction by the High Court under [Article 227](#) of the Constitution of India. Undoubtedly the High Court, under this Article, has the jurisdiction to ensure that all subordinate courts as well as statutory or quasi judicial tribunals, exercise the powers vested in them, within the bounds of their authority. The High Court has the power and the jurisdiction to ensure that they act in accordance with well established principles of law. The High Court is vested with the powers of superintendence and/or judicial revision, even in matters where no revision or appeal lies to the High Court. The jurisdiction under this Article is, in some ways, wider than the power and jurisdiction under [Article 226](#) of the Constitution of India. It is, however, well to remember the well known adage that greater the power, greater the care and caution in exercise thereof. The High Court is, therefore, expected to exercise such wide powers with great care, caution and circumspection. The exercise of jurisdiction must be within the well recognized constraints. It can not be exercised like a 'bull in a china shop', to correct all errors of judgment of a court, or tribunal, acting within the limits of its jurisdiction. This correctional jurisdiction can be exercised in cases where orders have been passed in grave dereliction of duty or in flagrant abuse of fundamental principles of law or justice. The High Court cannot lightly or liberally act as an appellate court and re-appreciate the evidence. Generally, it can not substitute its own conclusions for the conclusions reached by the courts below or the statutory/quasi judicial tribunals. The power to re-appreciate evidence

would only be justified in rare and exceptional situations where grave injustice would be done unless the High Court interferes. The exercise of such discretionary power would depend on the peculiar facts of each case, with the sole objective of ensuring that there is no miscarriage of justice”

8. In view of the ratio laid down by the Hon'ble Supreme Court, there is absolutely no substance in the petition which deserves to be dismissed and hence, it stands dismissed with costs. The amount deposited by the petitioner be refunded.

PRITHVIRAJ K.CHAVAN, J.

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