

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.837 OF 2018

Shaikh Vahid Jahangir @ Shaikh Vaid ... Petitioner

V e r s u s

Jagdeep Yeshwantrao Chowgule & 5 Ors. ... Respondents

Mr. Shailesh Redkar, Advocate for the Petitioner.

Coram :- C. V. BHADANG, J.

Date : 18th July, 2019.

ORAL ORDER

1. On 13.06.2019, a notice for final disposal was issued to the contesting respondent no.1, who is the original plaintiff. The respondent no.1 is absent though served. I have heard the Counsel for the petitioner. Perused record.

2. The petitioner is the defendant no.1, who is challenging the order dated 02.07.2018 and 23.07.2018 passed by the Trial Court. By the impugned order dated 02.07.2018, the evidence of the petitioner has been closed, and by the subsequent order dated 23.07.2018, the Trial Court has refused to recall the order dated 02.07.2018.

3. On 02.07.2018, the evidence of the petitioner was closed as the Trial Court had refused to grant an oral prayer for adjournment. The petitioner filed an application, exhibit 127, on 06.07.2018 for setting aside the order dated 02.07.2019 whereby the evidence of the petitioner was closed. The ground made out was that the Advocate was down with cold and fever from 30.06.2018 to 02.07.2018 and was thus unable to attend the Court. The application was supported by the affidavit of the concerned Advocate Mr. S.M. Salgaonkar.

4. The learned Trial Court has refused to allow the application, inter alia, on the ground that the Court has already closed the evidence and the Court cannot recall its own order.

5. The said reason, in my considered view, cannot be accepted. It is true that there were prior adjournments sought and which were granted at the instance of the petitioner. However, that alone may not be sufficient to refuse an adjournment if it is otherwise required to be granted on justified grounds. Reliance in this regard can be placed on the decision of the Supreme Court in the case of **State Bank of India vs. Km. Chandra Govindji, 2001(1) ALL MR 765**, in which the Supreme Court has held that an adjournment

cannot be refused only on the ground that earlier there were adjournments sought and were granted.

6. Considering the over all circumstances and, in the interest of fair trial, I find that the petitioner needs to be granted an opportunity to lead his evidence albeit subject to costs. Hence, the following order is passed :

ORDER

- (i) The petition is allowed.
- (ii) The impugned order is hereby set aside, subject to payment of costs of Rs.10,000/- to be deposited before the trial Court within two weeks from today.
- (iii) The deposit of costs is condition precedent for recall of order of closure of evidence.
- (iv) On deposit of the costs, the petitioner shall be permitted to lead his evidence and the evidence of his witness, if any.
- (v) The petition is disposed off in the aforesaid terms.

C. V. BHADANG, J.

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