

**IN THE HIGH COURT OF BOMBAY AT GOA****WRIT PETITION NO. 798 OF 2019**

Mrs. Liz Henrietta Do Carmo Gracias,  
aged 54 years, wife of Vikram F. Velho,  
currently residing in the United Kingdom,  
through her duly Constituted Power of  
Attorney Mr. John Valentino Carvalho,  
Resident of House No. 23, Ribandar, Goa -  
403 006.

.... Petitioner

Versus

Mr. Vikram Fernando Velho, son of Mr.  
Jose Virgilio Joaquim Coelho Velho, aged  
49, married, resident of c/o Velho &  
Filhos, Opp. Municipal Garden, Panaji,  
Goa.

.... Respondent

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Mr. Aires Rodrigues, Advocate for the Petitioner.

Mr. Chaitanya P. Padgaonkar, Advocate for the Respondent.

**CORAM : C.V. BHADANG, J.**

**DATE : 18<sup>th</sup> SEPTEMBER, 2019**

**ORAL JUDGMENT:**

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

2. The challenge in this Petition is to the order dated 13.08.2019 (below Exhibit D-77), filed by the petitioner to direct the respondent (original plaintiff) to furnish his voice sample for being referred to CFSL,

3. The said application has been dismissed by the learned Trial Court, on the ground that the application is not supported by an affidavit and the petitioner is trying to seek assistance from the Court in gathering evidence, which is not permissible. The learned Trial Court has also found that the transcript annexed to the application (Exhibit D-77), is not supported by an affidavit by the person, who has done the transcription and the application is vague.

4. Mr. Rodrigues, the learned Counsel for the petitioner pointed out that the certificate, as is required under Section 65-B of the Indian Evidence Act, was filed before the Trial Court on 31.03.2018, which has not been considered by the learned Trial Court. It is submitted that if, according to the learned Trial Court, there were certain discrepancies in the application, the Trial Court could have directed the petitioner to remove the same and then could have taken the matter for hearing.

5. The learned Counsel for the petitioner has also placed reliance on the decision of the Supreme Court in the case of **Ritesh Sinha Vs. State of Uttar Pradesh 2019 SCC Online SC 956, State Vs. M.R. Hiremath (2019) 7 SCC 515**

and the decision of Delhi High Court in the case of **Rakesh Bisht Vs. Central Bureau of Investigation 2007 Cri.L.J. 1530**, in order to submit that a party in an appropriate case can be directed to furnish his voice sample.

6. Mr. Padgaonkar, the learned Counsel for the respondent has pointed out that the application was vague, as has rightly been found by the learned Trial Court and it was not supported by an affidavit and was not maintainable. It is pointed out that at present, the respondent is under cross examination and the respondent is yet to close his side. Thus, it is an alternate submission that the application could not have been considered at this stage.

7. I have carefully considered the rival circumstances and the submissions made. As rightly pointed out by Mr. Padgaonkar, the learned Counsel for the respondent, at present, the Matrimonial Petition is at a stage where the respondent is under cross examination on behalf of the petitioner. A perusal of the impugned order shows that the learned Trial Court has dismissed the application *inter alia* on the ground that it was not supported by an affidavit and that the application is without the certificate of the person, who has done the transcription.

8. Insofar as the reliance placed on behalf of the petitioner, on the various decisions, it is not known whether, they were brought to the notice of the learned Trial Court. Be that as it may, in my considered view, it would be appropriate to grant liberty to the petitioner to file a properly constituted application, for a direction to the respondent to furnish his voice sample, supported by an affidavit, if so advised, after the respondent closes his side of the evidence. If such an application is filed, the learned Trial Court shall decide the same on its own merits and in accordance with law. Rival contentions of the parties in this regard are left open. Rule is made absolute in the aforesaid terms, with no order as to costs.

**C. V. BHADANG, J.**

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