

IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO. 248 OF 2020.

Staco Co. Ltd., thr. Its Aut.

Sign. Alfred Afonso.,

... Petitioner.

Versus

Navaneethan Rajgopal Ambaram(Dec)

Thr. His Lrs.,

... Respondent.

Shri H. Shirodkar, Advocate for the petitioner.

Shri B. Khandeparkar, Advocate for the respondent.

Coram:- DAMA SESHADRI NAIDU, J.

Date:- 18th March 2020

P.C.

The respondent's predecessor filed Special Civil Suit No. 26/2011/A, before the Civil Judge, Senior Division, Vasco Da Gama. It was against the sole defendant, for recovery of money. Pending the suit, the plaintiff died, and his legal representatives were brought on record. Those legal representatives are the respondents in this Writ Petition. The sole defendant is the petitioner.

2. Though the suit was filed in 2011, the trial began in September 2012. The recording of PW1's evidence has gone on for years, and I wonder if it could ever end, finally. On 3.11.2015, PW1's evidence was closed after he was subjected to cross examination. When PW2 was in the witness box, the defendant wanted to re-examine PW1. For that purpose, it filed an application.

3. If we leave out the further developments, on 15.4.2019 the defendant pressed for an order on the defendant's application for recalling the witness. This matter underwent adjournments on 17.4.2019, 24.4.2019, 7.6.2019, 19.6.2019, and 21.6.2019. On 21.6.2019, the plaintiff applied to bring on record additional evidence, said to be in the form of a public document. But the defendant objected to it. After a couple of adjournments, the plaintiff's application was eventually allowed.

4. After marking that document, the plaintiff closed PW2's evidence and wanted the trial Court to summon PW3. On 17.7.2019, the Court issued witness summons to the person who could be PW3. That summons could not be served, though. After a couple of failed attempts to serve the summons on the witness, the plaintiff closed his evidence on 21.10.2019. That is, the plaintiff examined no other witnesses than PW1 and PW2.

5. On 30.10.2019, the defendant sought time to lead its evidence. On 01.11.2019, the next date of adjournment, none was present for the defendant. The matter was adjourned to 08.11.2019. On that date, the defendant's counsel once again sought time, but the trial Court rejected the request and closed the defendant's evidence.

6. Later, on 22.11.2019, the plaintiff's counsel argued the matter, in the presence of the defendant's counsel. But as the defendant's

counsel sought time to advance his arguments, the Court adjourned the matter to 30.11.2019 and again to 11.12.2019.

7. At that stage, that is in December 2019, the trial Court allowed both the parties to argue the defendant's application for recalling PW1, filed in May 2018. The arguments took place on 26.12.2019. The trial Court allowed that application on 3.1.2020, subject to terms: the defendant to pay Rs.2,500/- as costs to the plaintiff. On 10.1.2020, the defendant applied to have that cost reduced. On the same day, the trial Court reduced the cost to Rs.2000/-.

8. On 24.1.2020, PW1 was recalled and partly cross-examined. At that juncture, the defendant wanted to confront PW1 with a document. When PW1 refused to acknowledge that document, the defendant insisted that despite PW1's disowning the document, the trial Court should mark it as an exhibit. As the Court was disinclined, the defendant's counsel sought time to place precedential support before the Court on the point that under those circumstances document should be marked.

9. So the trial Court adjourned the matter to 5.2.2020, when the defendant's counsel once again sought time. After refusing the defendant's request, the trial Court closed PW1's further cross examination and posted the matter to 12.2.2020 for final arguments. But on 12.2.2020, the defendant applied to the trial Court for having its order dated 5.2.2020 recalled. On 17.2.2020, the trial Court allowed that

application conditionally: the defendant to pay Rs.3,000/- as cost to the plaintiff. Then, as the matter was fixed for PW1's further cross-examination, the defendant on 24.2.2020, instead, filed a review application to have the cost waived or reduced. On 26.2.2020, the trial Court reduced the cost to Rs.1,000/- and posted the matter to 28.2.2020 for the continuation of PW1's cross-examination.

10. But on 28.2.2020, the defendant's counsel sought discharge from the case. It seems the trial Court wanted to proceed with the matter on every alternate day. The defendant's counsel did not seem to be comfortable with that schedule. When the defendant counsel sought the discharge, the General Power of Attorney agent of the defendant's Managing Director was said to be present. He sought time to get instructions; the trial Court adjourned the matter to 3.3.2020. On that date, the General Power of Attorney agent was not present. The trial Court, nevertheless, discharged the defendant's counsel and adjourned the matter to 06.03.2020, ostensibly, to enable the defendant to engage another counsel. Once again, on 6.3.2020, the General Power of Attorney agent appeared and sought time.

11. The trial Court adjourned the matter to 09.03.2020. Once again, the defendant wanted time, but the trial Court refused to grant any more adjournments. So it closed the defendant's right to further cross-examine PW1 on his recall and posted the matter to 11.3.2020 for arguments. On 11.3.2020, once again the defendant sought time to

advance its arguments, so the matter stood posted to 13.3.2020. Again, an adjournment was sought and granted. The trial Court recorded that the defendant would be at liberty to file written arguments. Again, on the next date of hearing, that is 17.3.2020, as no written arguments were filed, the matter was posted to 17.3.2020 and later to 27.3.2020.

12. In the meanwhile, the defendant filed this Writ Petition. Then, on 17.3.2020, the defendant informed the trial Court that it has filed this Writ Petition. As the plaintiff filed a caveat, I heard the learned counsel for the petitioner and the learned counsel for the respondent.

13. Shri H. Shirodkar, the learned counsel for the petitioner-defendant, has submitted that the Managing Director of the company is in South Korea. He has been held up there because of corona virus outbreak. Until he returns, the defendant Company cannot proceed with the matter.

14. I have specifically asked the learned counsel if some more time is granted, whether the defendant Company is willing to file its written arguments and proceed with the matter. But the counsel insisted that unless the Managing Director returns from South Korea, the Company would not proceed with the matter. To elaborate, the learned counsel has submitted that the Company must have a counsel on record. In this regard, he complains that the trial Court discharged the counsel without an NOC from the defendant.

15. On the other hand, Shri B. Khandeparkar, the learned counsel for the respondent, contends that all through the Managing Director himself has been represented by his General Power of Attorney agent. That agent alone signed the counsel's vakalatnama and also the written statement. According to him, the GP Agent had been present before the trial Court on many an occasion. The learned counsel has also contended that the Court has ample powers to discharge a counsel for justifiable reasons even without an NOC from the party that engaged the counsel.

16. Indeed, the trial Court has discharged the petitioner's counsel from the record. That very discharge has not been challenged. Even otherwise an NOC from a party is not *sine qua non* if the Court, for the reasons justifiable, desires to discharge a counsel from a case. This discharge can be either at the Court's own volition or at the counsel's request. All that the Court should do is record a reason.

17. The petitioner as the defendant has taken numerous adjournments. And they are too numerous to be repeated. Even now the Company's counsel insists that unless the Managing Director returns from South Korea an event of uncertainty in the face of COVID-19 pandemic outbreak, it does not desire to proceed with the matter.

18. That said, the Managing Director has already appointed a General Power of Attorney agent, who has been looking after the case. In other words, the Managing Director himself has not been

monitoring the litigation; it is his agent. And that agent, in fact, has signed the vakalatnama, presumably instructed the counsel, signed the written statement, attended the case adjournments, and even sought time on more than one occasion.

19. About setting aside the trial Court's order closing PW1's further cross examination, I fail to see any justifiable reasons. On the contrary, the trial Court has given ample opportunity to the petitioner but to no avail.

20. Under these circumstances, I find no merit in this writ petition. The orders impugned are well within the jurisdictional bounds of the trial Court. Therefore, I fail to see an opportunity for this Court to use its supervisory powers under Article 227 of Constitution of India.

I, accordingly, dismiss the writ Petition as merit less. No order on costs.

DAMA SESHADRI NAIDU, J.

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