

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL WRIT PETITION NO. 217 OF 2019**

KHALID AHMED DESAI.,

... Petitioner

Versus

SANA RAZVI.,

... Respondent

Shri Cleofato Almeida Coutinho, Advocate for the Petitioner.

Shri John Abreu Lobo, Advocate for the Respondent.

Coram:- NUTAN D. SARDESSAI, J.**Date:- 4th March, 2020**

P.C.:

Heard Shri C. A. Coutinho, learned Advocate for the Petitioner and Shri J. A. Lobo, learned Advocate for the respondent.

2. It has been the contention of Shri C. A. Coutinho, learned Advocate in the course of arguments that the documents were sought to be produced by the petitioner alongwith the affidavit in evidence which has mainly been disallowed by the learned Trial Court on the premise that the

trial has to be conducted in a time bound manner and that in case the said documents are allowed to be produced in evidence, it would impede the disposal of the case within the time bound frame. It was also his submission that it was not the case of the respondent that it was not the finding of the learned Judicial Magistrate, First Class that the documents were irrelevant but the learned Trial Court had mainly proceeded on the premise that it had to adhere to a time frame to dispose off the matter and on that premise it had mainly disallowed the application. The other ground was that the documents were not produced alongwith the written statement in defence

3. Shri J. A. Lobo, learned Advocate submitted that the intention of the respondent was to protract the proceedings. The documents of the school had been tailormade to substantiate his case that he had been paying the fees of his minor child and that the same had been issued to him after the proceedings were initiated by the respondent. It was also his contention that these documents were not relied upon earlier at the time of filing of the written statement nor was the respondent afforded any opportunity to rebut the case when she had examined herself by confronting her with the said documents. A valuable opportunity was lost to the respondent to deal with the documents and therefore on that premise, the impugned order was not liable to be interfered

with.

4. i have heard both the learned Advocates and on a consideration of the reasons assigned by the learned Judicial Magistrate, First Class, it is apparent that the learned Judicial Magistrate, First Class has mostly been swayed by the fact that it has to complete the trial of the case in a time bound frame and that allowing the production of the documents would hamper the Court from adhering to the said schedule of disposal. This was besides the fact that the learned Trial Court was concerned with the fact that these documents were not relied upon alongwith the written statement in defence. Nonetheless looking to the documents cursorily, it is apparent that they are relevant to the case of the petitioner and though not produced alongwith the written statement the same cannot be excluded from the purview of consideration looking to their relevancy to the case at hand. The objection on behalf of the respondent can well be met by imposing exemplary cost on the petitioner herein.

5. In the circumstances therefore, i find merit in the petition and in view thereof, quash and set aside the order passed by the learned Judicial Magistrate, First Class disallowing the production of the documents. The petitioner is however saddled with the costs of ₹30,000/- which he shall pay to the respondent being a condition precedent to the

production of the documents in the Court. Furthermore, since these documents are sought to be introduced by the petitioner at the stage of his defence, liberty is reserved to the respondent to re-examine herself and for which the learned Judicial Magistrate, First Class without being unduly carried away by the time bound frame should permit the respondent to re-examine herself after the completion of the evidence of the petitioner.

6. This is without prejudice to the fact that this court has not made any observations on the merits of the case and the documents in question. It shall be open to the respondent to raise the question of admissibility and relevancy at the time of the introduction of the said documents before the learned Judicial Magistrate, First Class.

7. In these terms, the petition stands disposed off.

NUTAN D. SARDESSAI, J.

MF/-