

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 1013 OF 2019

Clyde Fernandes	...Petitioner
<i>Versus</i>	
1. Joana Souza & 4 Ors.	...Respondents

Mr. Anthony D' Silva, Advocate for the Petitioner.

CORAM: MANISH PITALE, J
DATED: 14th September 2021

P.C.

1. Heard learned Counsel for the Petitioner.

2. By this Petition, the Petitioner has challenged the order dated 11.11.2019, passed by the learned IIIrd Additional Adhoc Senior Civil Judge, at Margao, whereby the application filed on behalf of the Petitioner (original Plaintiff) seeking leave to examine two witnesses was only partly allowed. While the Court permitted the Petitioner to examine one of the witnesses, as regards the other witness, the request was rejected by the said Court.

3. The Petitioner in the present case had filed a suit for injunction and damages and other consequential reliefs against the Respondent. Only Respondent no.1(original Defendant no.1) filed the written statement to oppose the said suit. The Respondent nos. 2 to 5 (original Defendant nos. 2 to 5) did not file any written statement. The case of the Petitioner is that only the Respondent no.1 can be said to be the real contesting

Respondent for the reason that she is the owner of the property in the context of which the Petitioner had filed the aforesaid suit

4. Although the Petitioner had made various prayers before the said Court, with the passage of time and subsequent events, including the fact that the Petitioner handed over possession of the suit premises to the Respondent no.1, as of now, the Petitioner is pursuing the suit only for reliefs as per prayer clauses (g) and (h), which read as follows :

“g) For a direction to the Defendants to pay to the Plaintiff a sum of Rs. 14,00,000 (Rupees Fourteen lakhs only) with interest @ 13 percent till the date of repayment as compensatory damages to mitigate damages suffered to the Plaintiff for the loss and for a loss caused by non-performance of the oral Agreement dated 1st May 2014.

h) For a direction to the Defendants to pay to the Plaintiff a sum of Rs. 10,00,000/- for violating the oral contract/oral Agreement dated 1st May 2014 which was violated and broken as punitive liquidated damages and as a penalty for mental harassment.”

5. It is the case of the Petitioner that he had made certain changes and improved the interior of the suit property in respect of which he is now claiming compensation and damages from the Respondents.

6. This Court issued notice in the present Writ Petition and by way of interim relief, directed that the evidence of the witness in respect of whom permission was granted in the impugned order may be recorded but the evidence of the Petitioner may not be closed during the pendency of the present Writ Petition. The contesting Respondent no.1 has been duly served in the present Petition, but she has chosen not to appear before this Court. The office note shows that Respondent nos. 3 to 5 are staying abroad and that Respondent no.2 is also staying at some other place. It is contended on behalf of the Petitioner that before the Court below, there is no material placed on record as regards any change of address of the Respondent nos. 2 to 5 (original Defendant nos. 2 to 5).

7. In these circumstances, since the contesting Respondent no. 1 has already been served, this Court is proceeding to dispose of the present Writ Petition, after hearing the learned Counsel appearing for the Petitioner.

8. Mr. Anthony D'Silva, the learned Counsel appearing for the Petitioner, submits that the Petitioner desires to examine the aforesaid two witnesses i.e. an Engineer and a Manager of Hindustan Coco-Cola Beverages Pvt. Ltd. This was in the context of the material sought to be brought on record on behalf of the Petitioner to justify prayers (g) and (h) quoted above.

9. According to the learned Counsel for the Petitioner, the Court below ought to have allowed examination of both the witnesses. But the Court committed an error in rejecting the request for examining the Engineer by observing that the report is

not relied upon. It is pertinent that the original defendants had not opposed the said application before the Court below. Attention of this Court is invited to the roznama of the Court below to indicate that notices were issued to the Engineer as a valuer and the report of the Engineer was taken on record on 01.03.2018. It was contended that the said report and the examination of the Engineer as a witness would certainly assist the Court in determining as to whether the aforesaid prayers seeking compensation made on behalf of the Petitioner could be granted and if so to what extent. On this basis, it was submitted that the Writ Petition deserves to be allowed.

10. This Court has perused the material on record. In the application dated 27.09.2019, filed on behalf of the Petitioner, the two aforesaid witnesses were named and it was stated that their evidence was necessary and they were required to be examined. In the impugned order dated 11.11.2019, the Court below allowed the Manager to be examined as a witness, but rejected the request for examining the Engineer by merely observing that the report is not relied.

11. A perusal of the record shows that on 23.10.2017, an application was jointly filed by the rival parties for appointing a valuer pursuant to which the aforesaid Engineer was appointed. On 01.03.2018, the report of the Engineer was taken on record. In these circumstances, this Court finds it difficult to agree with the Court below that the Engineer was not required to be examined. The reliefs now sought by the Petitioner pertain only to payment of compensation towards alleged damages and loss suffered by him and in that context, it appears that examination

of the Engineer would assist the Court below. This is all the more significant because the Engineer was appointed at the joint request of the rival parties. Therefore, this Court is of the opinion that the impugned order deserves interference.

12. Accordingly, the impugned order is set aside to the extent that the request to examine the Engineer came to be rejected. Accordingly, the application filed on behalf of the Petitioner to examine both the witnesses stands allowed in its entirety. It appears that the evidence of the Manager has been already recorded before the Court below. Therefore, now the Court below shall proceed to permit examination of the Engineer as a witness. No prejudice will be suffered by the contesting Respondent no.1 as she would be entitled to cross-examine the said witness.

13. In view of the above, the Writ Petition is allowed. The impugned order is set aside to the extent that it rejected the prayer of the Petitioner to examine the Engineer and consequently, the Petitioner is permitted to examine the Engineer, details of whom are specified in the application dated 27.09.2019, moved before the Court below.

14. In view of the Writ Petition being allowed, the time for disposal of the suit by the Court below is extended and it is directed that the suit be disposed of within a period of one year from today.

MANISH PITALE, J.

ANDREZA PEREIRA
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