

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.1041 OF 2019

Sewerage and Infrastructural
Development Corporation Limited,
A Government of Goa Undertaking,
having its Office at Ishan Building,
2nd Floor, Opp. Corporation of City of Panaji,
Panaji Goa.

Through its Managing Director
Shri Padmakar Babarao Seldarkar,
59 years of age,
Son of Babarao Apparao Seldarkar
having office at Ishan Building,
2nd Floor, Opp. Corporation of City of Panaji.
Panaji Goa.

.... Petitioner

Versus

Skippers Limited,
A Company registered under the
Indian Companies Act, 1956
having its registered office at
3A, Loudon Street, Ist Floor,
Kolkata, 700 017,
Through its Managing Director,
having its Office at
3A, Loudon Street, 1st Floor,
Kolkata, 700 017.

.... Respondent

Mr. A. D. Bhole, Advocate for the Petitioner.

Mr. Abhijeet Kamat, Advocate for the Respondent.

Coram : M. S. SONAK, J

Date : 16th June 2021

ORAL JUDGMENT

Heard Mr. A. D. Bhobe, learned counsel for the Petitioner and Mr. A. Kamat, learned counsel for the Respondent.

2. Rule. Rule is made returnable forthwith with the consent and at the request of the learned counsel for the parties.

3. The challenge in this petition is to the order dated 15th October 2019 on Exhibit D-29 in Special Civil Suit No.86/2017 by which the learned Trial Judge has dismissed the Petitioner's (plaintiff's) application for recall of order dated 11th June 2019 passed on Exhibit D-28 closing the evidence of the Petitioner for failure on the part of the Petitioner's witness i.e. Assistant Engineer Mr. Velip remaining present to depose on the appointed date.

4. Mr. Bhobe, learned counsel for the Petitioner submits that the witness was held up before the Administrative Authority on account of official duty and therefore could not remain present. He submits that the Trial Court was not justified in taking into consideration the grounds on which the previous adjournments were granted. He submits that as long as

sufficient cause was shown on the appointed date, such a harsh order ought not to have been made. Mr. Bhobe submits that this is a suit instituted by a public sector undertaking claiming over 3.5 crores from the Respondent-Defendant. He submits that since the issue is about public funds, the learned Trial Judge should have adopted a liberal approach and not made the harsh order of closing the evidence of the Petitioner/plaintiff.

5. Mr. Bhobe on instructions states that Mr. Velip, Assistant Engineer who failed to remain present on the appointed date has now offered to pay costs of ₹15,000/- to the Respondent so that, the Corporation is not required to pay such costs from its own coffers. Mr. Bhobe submits that this is yet another factor that could be taken into consideration in the present matter. Mr. Bhobe points out that even the Respondent-Defendant in this matter have applied for several adjournments which were granted by the Trial Court.

6. Mr. A. Kamat, learned counsel for the Respondent submits that the application seeking adjournment had only stated that the witness was held up before the Administrative Authority without furnishing any details. He submits that the opportunity was granted by the Trial Court to submit details which opportunity was not availed by the Petitioner. He submits that the matter has been adjourned at the instance of the Petitioner on no less than eleven occasions and the conduct of the Petitioner was quite

correctly taken into account by the Trial Court in this matter. He relies on *Shiv Cotex Vs Tirgun Auto Plast Private Limited and others*¹ to submit that indulgence should not be extended on the ground of misplaced sympathy merely because the stakes were high. He submits that since the stakes were high utmost diligence should be shown by the Corporation in pursuing the suit. However, no special treatment should be shown to the Petitioner because it is a public sector undertaking or because any issue of alleged public finance are involved. For all these reasons, he submits that this petition is liable to be dismissed and may be dismissed.

7. On considering the rival contentions and perusing the material on record, in my judgment some relief is due to the Petitioner though subject to payment of costs.

8. In this case, an application for adjournment was filed at the appointed date pointing out that the witness was held up before the Administrative Authority. Although, it is true that the witness, should have given precedent to the matter proceeding before the Court, it can be considered that there was an error of judgment on the part of the witness in giving a priority to attend the official duty before the Administrative Authority. For this, the officer has offered to pay the costs of ₹15,000/- from his own pocket without burdening the Corporation any further. This

¹ 2011(9) SCC 678

is an aspect which is required to be considered along with the other aspects like relative prejudice, issue of public finance and position of Corporation, which to a great extent have to rely upon its officers for day today functioning.

9 The circumstance that the matter was adjourned at the behest of the Petitioner on eleven earlier occasions throughout the tenure of suit which was instituted in the year 2013, is no doubt relevant. But at the same time, it is necessary to note that the adjournments were granted by the Civil Court on those occasions presumably for sufficient cause. This was a case where the application for recall could have therefore be allowed but no doubt on imposition of costs.

10. In this case, no indulgence is being shown to the Petitioner merely on account of some sympathy or because the stakes are high. To that extent, the ruling in *Shiv Cotex* (supra) will not apply. This is also not a case where some special consideration is shown to the Corporation. However, at the same time, it cannot be forgotten that the Corporation of this nature has no necessity to rely on its officers. Therefore, for some negligence or error of judgment on the part of the officer, in all cases, the Corporation cannot be made to unduly suffered. This does not mean that the officers, can act negligently or avoid required degree of diligent to attend the Court cases and the Corporation can then simply get away by

pleading negligence on behalf of its officers. Such matters have to be considered in its totality. The Corporation, should also consider whether action is necessary against its negligent officers particularly where it pleads that the case was not pursued properly on account of negligence of the officer. In this case, the officer on account of whose error of judgment the evidence on behalf of the Corporation came to be closed has offered to pay the costs of ₹15,000/- from his own pocket without burdening the Corporation. This aspect cannot be ignored though cannot form the sole basis for setting aside the impugned orders.

11. Therefore, upon taking into consideration the totality of the circumstances as also the harshness of the consequence arising from the closure of the Petitioner's evidence, the impugned orders dated 11th June 2019 and 15th October 2019 are hereby set aside and the Corporation is granted opportunity to proceed with its evidence in the matter. This shall be subject to the payment of costs of ₹15,000/- which the engineer has offered to pay personally.

12. Mr. A. Kamat on instructions states that the costs may be made over to the Goa State Covid-19 Relief Fund.

13. Mr. Bhobe states that the Assistant Engineer Mr. Velip will pay the amount of ₹15,000/- to the Goa State Covid-19 Relief Fund within a

period of two weeks from today and file proof of payment before the Trial Court. Subject to payment of such amount and the production of such proof, the impugned orders shall stand set aside. If, no payment is made and proof of payment produced within the aforesaid period, this petition will stand dismissed with costs of ₹15,000/- payable by the Petitioner to the Goa State Covid-19 Relief Fund.

14. The parties to appear before the Trial Court on 6th July 2021 at 10.00 a.m. and file an authenticated copy of this order.

15. Rule is made absolute in the aforesaid terms.

16. All concerned to act based on the authenticated copy of this order.

M. S. SONAK, J.

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TARI AMRUT
NAGESH

Digitally signed by TARI AMRUT
NAGESH
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