

Andreza

**IN THE HIGH COURT OF BOMBAY AT GOA**

**WRIT PETITION NO. 211 OF 2020**

Suryakant Fatu Shetgaonkar

... Petitioner

*Versus*

Tanu Yeshwant Shetgaonkar

...Respondent

**Mr. A. D. Bhobe, Advocate** with *Ms. S. Shaikh, Advocate for the Petitioner.*

**Mr. D. D. Zaveri, Advocate** for the Respondent.

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**CORAM: G. S. KULKARNI, J.**

**DATED: 22<sup>nd</sup> November, 2022**

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**P.C.**

**1.** The order impugned in this petition is order dated 16 December, 2019 passed by the learned District Judge-II, Mapusa, whereby an application as filed by the petitioner-plaintiff for recall of the order dated 8 October, 2018, passed on Misc. Civil Appeal No. 101 of 2017, has been dismissed.

**2.** The relevant facts are required to be noted .

The petitioner is the plaintiff in Civil Suit No. 17 of 2016 filed before the Civil Judge, Junior Division at Pernem. The petitioner

moved an application for temporary injunction in the said suit. Such application of the petitioner came to be rejected by the learned trial Judge by an order dated 3 August, 2017. The said order passed by the learned Trial Judge, was assailed by the petitioner by approaching the learned District Judge in the proceedings of Misc. Civil Appeal No. 101/2017. The said Misc. Civil Appeal also came to be dismissed by the learned District Judge by his judgment and order dated 8 October, 2018 as impugned.

3. The grievance of the petitioner is that the learned District Judge has decided the appeal without offering any opportunity of an oral hearing to the learned Counsel for the petitioner and has passed the impugned order on the basis of the written submissions, as placed on record. To support such contention, Court's attention has been drawn to the roznama(s) (annexure 'G') dated 12 February, 2018, 5 March 2018, 17 March 2018, 21 August 2018, 27 September 2018 and 8 October 2018.

4. From a perusal of the roznama(s), it appears that on all the dates, except the last date on which the order on the appeal came to be passed (i.e. on 8 October 2018), the respondent had throughout remained absent. On 8 October, 2018, no opportunity of making any

arguments was granted which is also clear from the roznama as recorded for such date. The roznama reads thus :

| Today's date | Roznama                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Next/Disposal Date |
|--------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|
| 08/10/18     | Called out today,<br>None present for the appellant,<br>Adv. Ms. Harshada Naik present holding for<br>Adv. N.R.Sawant for the Respondent and filed<br>Letter of Authority also filed written<br>arguments-Order passed-filed.<br>Clarification sought.<br>A-13-The Mis. Civil Appeal is dismissed.<br>Pronounced in the Open Court.<br>Proceedings closed.<br>D-11-Letter of Authority<br>D-12-Written Arguments filed by Respondent.<br>BY JUDGMENT: Proceeding is closed<br>Certified that all the necessary stamps are<br>being punched and cancelled.<br>Bench Clerk Grade I. | 08/10/18           |

5. In the above circumstances, the petitioner approached this Court in Writ Petition no. 14/2019 making a grievance that the learned District Judge without an opportunity of a oral hearing to the petitioner, had decided the Misc. Civil Appln. No.101/2017. A coordinate bench of this Court, was pleased to dispose of the said petition by an order dated 11.07.2019. By the said order, the petitioner was granted an opportunity for making an application to

recall the said judgment and order dated 8 October, 2018. The said order reads thus :

“ Heard the learned Counsel for the parties.

2. The only contention raised on behalf of the petitioner is that no opportunity of oral hearing was granted by the learned District Judge before deciding Misc. Civil Appeal No.101/2017. The petitioner has filed an affidavit of Advocate Shri P. T. Korgaonkar to that effect.

3. In such a situation, it is for the petitioner to move the learned District Judge with an appropriate application inasmuch as it is only the Court which passed the judgment and order which would be in a position to decide any such issue.

4. In such circumstances, the petition is disposed off with liberty to the petitioner to move the learned District Judge with an appropriate application for recall of the impugned judgment, if so advised. If such an application is filed, the learned District Judge shall decide the same on its own merits and in accordance with law.

5. The rival contentions of both the parties are left open.

In the circumstances, there shall be no order as to costs.”

6. In pursuance of such order, the petitioner moved an application before the learned District Judge for recall of the

judgment and order dated 8 October, 2018. By the impugned order, the application has been rejected.

7. Having heard the learned Counsel for the parties, In my opinion, the observations as made by the Court in rejecting the petitioner's application for recall of the said order cannot be sustained and more particularly considering the reasoning of the learned Judge at paragraph 25, which reads thus :

“25. Although, it is a settled law that the oral arguments to be heard. The Advocate for the appellant having not disputed that they have already filed their written arguments on records and in view of the above discussion the appellant had not made out a case for recall of the Judgment and Order dated 08.10.2018 passed in Misc. Civil Appeal No. 101/2017 under Section 151 of Civil Procedures Code.”

8. It is not acceptable that the proceedings before the Court are decided only on written submissions which may be submitted by the parties. In our system of dispensation of justice, written arguments can never be a substitute to oral arguments and/or submissions as may be made by the parties or on their behalf before the Court. In my opinion, oral arguments play a vital role in the Court forming an appropriate opinion on the proceedings before it. The requirement of a oral hearing being granted to the parties is one of the essential

facets in the adjudicatory process. This more particularly when it is a subject matter of an appeal as provided under the Code of Civil Procedure.

9. An useful reference can be made to the decisions of the Supreme Court in **P. N. Eswara Iyer & Ors. vs. Registrar, Supreme Court of India**<sup>1</sup>, wherein the Court has held that an opportunity of an oral hearing is of paramount significance. The said decision has also been considered by the coordinate bench of this Court in the proceedings of **George Peter Mendes & anr vs. Robert Mendes & Ors.**<sup>2</sup>, decided on 24 August, 2020. Thus, in the present case as the Court has proceeded purely on written submissions, there is no alternative but to set aside the impugned order.

10. The impugned Order is accordingly set aside with a direction to the learned Judge to hear the petitioner's Misc. Civil Appeal No. 101 of 2017 on merits by granting an opportunity to both the parties of a oral hearing. Let a decision on the appeal be taken within a period of three months from the first appearance of the parties. The parties shall appear before the learned District Judge on 5 December, 2022.

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<sup>1</sup> (1980) 4 SCC 680

<sup>2</sup> Second Appeal No. 102 of 2014 decided on 24.08.2015

11. All contentions of the parties on merits are expressly kept open.
12. Parties to act on an authenticated copy of this order.

**G. S. KULKARNI, J**