

Shakuntala

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.19 OF 2020

SHAIKH VAHID JAHANGIR @
SHAIKH VAID., R/o Fatima
Manzil, Near 1st water tank, New
Vaddem, Vasco-Da-Gama, Goa.

... PETITIONER

Versus

JAGDEEP YESHWANTRAO
CHOWGULE, s/o late Yeshwantrao
Chowgule, Major in age, Indian National,
R/o Chowgule House, Vasco-da-Gama,
Goa

2. Mr. Daulatrao Yeshwantrao Chowgule,
S/o late Yeshwantrao Chowgule, major
in age, R/o 60-61, Alto Mangor,
Vasco-da-Gama, Goa.

3. Mr. Jagdish Yeshwantrao Chowgule,
s/o late Yeshwantrao Chowgule, major in
age, Indian National, R/o Chowgule House,
Vasco-da-Gama, Goa

4. Mr. Jaywant Yeshwantrao Chowgule,
s/o late Yeshwantrao Chowgule, major in
age, Indian National, R/o Chowgule House,
Vasco-da-Gama, Goa

5. Mrs. Sheela Yeshwantrao Chowgule,
s/o late Yeshwantrao Chowgule, major in
age, R/o 34, Lengkok, Gopeng,
Tamangolfpho31350, West Malatsia.

6. Ms.Vidhya Vernekar, d/o late Yeshwantrao
Chowgule, Major in age, Indian
National, R/o St. Joaquim Road,
Borda, Margoa, Goa

... RESPONDENTS

Mr. Shailesh Redkar, Advocate for the Petitioner.

CORAM:- BHARAT P. DESHPANDE, J.

DATED :- 2nd November, 2023

ORAL JUDGMENT

1. Heard Mr. Redkar appearing for the Petitioner. Even though Respondent were duly served, none appeared in the matter.

2. Rule. Heard forthwith with the consent of the learned Counsel for the parties.

3. This petition is filed challenging the impugned order dated 25.11.2019 by which learned Trial Court closed the defence evidence on the ground that though the defendant was present in the Court, he failed to step into the witness box and sought adjournment.

4. The present Petitioner is the original Defendant. An application was filed for recalling the impugned order wherein it was prayed that though the Defendant was present but he was not feeling well and therefore an application was moved for adjournment. The

learned Trial Court had kept the matter back with intention not to grant further time. However, since the Advocate for the Plaintiff was not present and as the Court time was over, the matter was taken in Chamber. Learned Trial Court failed to consider the request made by the Petitioner and rejected the application for recalling its order of closure of defence evidence.

5. Rival contentions fall for determination.

6. Suit is filed by Respondent no. 1 wherein the evidence of the plaintiff was over and the matter was fixed for defence evidence. From the perusal of the impugned order, it revealed that the Petitioner was present in the Court but since he was not feeling well the adjournment application was filed. Besides this the Advocate for Plaintiff/Respondent no. 1 herein was also not present and as the Court time was over, the matter was otherwise required to be adjourned to the next date as learned Trial Court was busy in other judicial work.

7. Even otherwise, refusing to grant an opportunity to the Defendant to lead evidence, on the ground that he was not feeling well though present in the Court, appears to be little bit harsh. At the most the Trial Court should have imposed cost while adjourning the matter.

8. The impugned order clearly shows that jurisdiction vested in it have not been properly exercised. The learned Trial Court in its reasoning also admits that the Defendant was present but failed to step into the witness box. In such circumstances closing defence evidence ought not to have been opted upon.

9. Valuable right of the Defendant is taken away. The suit filed before the Trial Court is for recovery of money. Although the suit is of the year 2012, the defendant could have been accommodated by imposing costs. Mr. Redkar for the Petitioner submits that the petitioner is ready and willing to pay cost of Rs. 15,000/-. Such statement is acceptable. The impugned order needs to be quashed and set aside by giving opportunity to the Petitioner to lead evidence. However, it is made clear that no further adjournment shall be granted to the Petitioner except in exceptional circumstances and on depositing of cost of Rs.15,000/- before the Trial Court within a period of one week.

10. Trial Court shall prepone the date by intimating the learned Counsel for both the sides. Petitioner shall deposit the cost within one week from today and produce an authenticated copy of this Order so that date for evidence can be fixed. The Trial Court to proceed with the matter and allow the Petitioner to lead defence Evidence. Similarly, since the matter is of year 2012, endeavour shall

be made to dispose of the suit on or before 31.12.2023.

11. Rule is made absolute in above terms.

12. Parties to act upon authenticated copy of this Order.

BHARAT P. DESHPANDE, J.