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IN THE HIGH COURT OF BOMBAY AT GOA

**WRIT PETITION NO.33 OF 2022
AND
MISC. CIVIL APPLICATION NO.29 OF 2022**

MRS. SUSHMA HARI NAIKPETITIONER

Versus

MAST. YASIN ARAFAD NAIK &
ORS.RESPONDENTS

Mr Deepak Gaonkar and Mr Amey Salgaonkar, Advocates for the
Petitioner.

Mr Santosh Bharne, Advocate for Respondent No.4.

CORAM: M. S. SONAK, J.

DATE : 20th JULY 2023

ORAL ORDER :

1. Heard Mr Gaonkar for the petitioner and Mr Bharne for respondent no.4 – Insurance Company. Mr Gaonkar states that respondent nos.1,2 & 3 are served. He points out that respondent nos.1 & 2 are the original claimants before the Tribunal.

2. The challenge in this petition is to the order dated 05.01.2022 made by the Tribunal exercising jurisdiction under Order 16 Rule 14 and 15 of CPC and directing the petitioner to step into the witness

box to produce, if possible, the original of the Fitness Certificate in respect of the vehicle which was allegedly involved in the accident.

3. Mr Gaonkar states that respondent no.4 – Insurance Company had already given a notice to the petitioner to produce the original failing which the notice said that the Insurance Company would lead secondary evidence regarding the Fitness Certificate. Mr Gaonkar states that as of now no response is given to this notice. However, on instructions from the petitioner, Mr Gaonkar states that no such original Fitness Certificate is available with the petitioner and this statement may be taken as a response to the Insurance Company's notice dated 25.10.2021.

4. Accordingly, Mr Gaonkar's above statement made on instructions of the petitioner is recorded. Now that the petitioner has made a categorical statement that he does not have the original of the Fitness Certificate, leave will have to be granted to the Insurance Company to lead secondary evidence on this issue. For this purpose, if necessary, the Insurance Company is granted leave to recall its witness or examine fresh witness. Accordingly, such leave is granted.

5. Considering the above development, it would not be necessary for the petitioner to step into the witness box. To that extent the impugned order is modified. There was no illegality in the exercise of jurisdiction under Order 16 Rule 14 by the Tribunal. At that stage,

the Tribunal did not have the petitioner's response about not having the original of the Fitness Certificate.

6. The petition is disposed of in the above terms. All concerned to act on an authenticated copy of this order. Civil Application does not survive and the same is disposed of.

M. S. SONAK, J.

NITI K
HALDANKAR

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NITI K HALDANKAR
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