

Niti

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.835 OF 2019

Mrs. Vilasini A. Shirodkar
Aged 63 years, wife of
Late Appa S. Shirodkar,
Indian National,
R/o. H.No.458, New Vaddem,
Vasco-da-Gama, duly represented by the
power of attorney holder
Mr. Surendra Appa ShirodkarPetitioner

Versus

Mr. Ritzwan Sheikh,
aged 44 years, Indian National,
r/o. H.No.118, Sheikh Nabi House
Rangavi Estate, Issorcim,
Vasco-Da-Gama, Goa.Respondent

Ms Suzette Pereira, Advocate *for the Petitioner.*

Mr Matlock D'Souza, Advocate *for the Respondent.*

CORAM: M. S. SONAK, J.

DATE : 2nd MARCH 2023

ORAL JUDGMENT :

1. Heard Ms Suzette Pereira for the petitioner and Mr Matlock D'Souza for the respondent.

2. Rule. With the consent of and at the request of the learned Counsel for the parties, the rule is made returnable forthwith.

3. The challenge in this petition is to the order dated 16.07.2018, by which the learned Trial Court dismissed the petitioner's application for adjournment and closed the petitioner's evidence.

4. The petitioner is the plaintiff in Regular Civil Suit No.41/2014. The respondent is the defendant. The suit is for the restoration of possession of immovable property situated, according to Ms Pereira, the learned Counsel for the petitioner, near Dabolim Airport.

5. Ms Pereira points out that the matter was adjourned on earlier occasions due to the non-availability of the Judge. She pointed out that there was sufficient cause for the petitioner not proceeding with the evidence on 09.04.2018 and after considering this cause adjournment was granted up to 13.06.2018. She pointed out that the petitioner or rather the Power of Attorney of the petitioner, who is the son of the petitioner, is a seaman employed on international ships. She pointed out that he had to sail away in terms of his employment contract and therefore could not attend the Court and give evidence on the adjourned date. She submits that all this constitutes sufficient cause and, therefore, the harsh order of closure of evidence should not have been made. She submits that some reasonable costs up to

₹25,000/- can be imposed upon the petitioner for an opportunity to lead evidence.

6. Mr Metlock D'Souza opposes the grant of any relief in this petition by pointing out that from 2015 onwards the matter was being delayed by the petitioner. He submits that even after ex-parte stay was obtained in this petition on 20.09.2019, the petitioner did not bother to pay process fees or copies for a long time. As a result the proceedings before the Trial Court remained stayed but there was no service effected within a reasonable time upon the respondent. He submits that initially the petitioner was to depose in the matter but at a later point in time, it was stated that his son as a Power of Attorney deposed in the matter. He submits that the impugned order was correctly made and ought not to be interfered with.

7. The rival contentions now fall for my determination.

8. On perusing the roznama it does appear that the petitioner was not very diligent in pursuing the matter and proceeding with the evidence in the suit. Initially, the petitioner was to depose in the matter but at a later point in time it was stated that his son and attorney would depose in the matter. To accommodate the petitioner's son, the Court did grant many long adjournments in the past. Therefore, it is not correct to blame the Court simply because on

one or two dates the Court was unable to take the matter on the appointed date.

9. Be that as it may, an adjournment was granted by the Court on 09.04.2018. Ms Pereira pointed out that this adjournment was granted after sufficient cause was shown on the said date. Even a medical certificate dated 17.04.2018 is placed on record. The next date was posted on 13.06.2018. On the next date, once again an application was filed for adjournment on the ground that the attorney was sailing and his ship SUVM would be loading at SBM, Argentina for China and the voyage would take about 41 days. It was submitted in the application for adjournment that the attorney would return in the second week of September 2018. Even an email was enclosed as proof of these circumstances.

10. Although the reason may not be too much convincing, the fact remains that the attorney of the petitioner was sailing. Though the Courts are not expected to keep on adjourning matters based on the convenience of the parties or their witnesses, in the interest of justice, an opportunity can be granted to the petitioner subject no doubt to payment of substantial costs.

11. Ms Pereira states that the attorney Surendra is no longer employed on the ship and, if the opportunity is granted, would depose before the Court on the date to be appointed by the Court without

seeking any adjournments. The matter has remained stayed from 20.09.2019. This has caused prejudice to the respondents but ultimately the suit is by the petitioner seeking restoration of possession of the property which is alleged to be encroached upon by the respondent. Therefore, an additional opportunity can be granted to the petitioner subject to payment of substantial costs to compensate the respondent for the prejudice that will occasion by a grant of an additional opportunity to the petitioner. The order closing evidence does appear to be harsh in retrospect at least and the interest of justice would be served after an additional opportunity is granted to the petitioner subject to payment of costs.

12. For all the above reasons, the impugned order dated 16.07.2018 is set aside subject to payment of costs of ₹40,000/- by the petitioner within 6 weeks from today. This is because the petitioner has already deposited ₹10,000/- in this Court. The costs should be deposited before the Trial Court within six weeks from today after giving due notice to the learned Counsel appearing for the respondent before the Trial Court. If the costs are not deposited within six weeks, then, this petition shall be deemed to have been dismissed with costs of ₹10,000/-.

13. Since the petitioner has already deposited ₹10,000/- in this Court, liberty is granted to the respondent to withdraw such amount unconditionally. The respondent will have to provide identification

and bank details so that this amount can be transferred by the Registry into his bank account.

14. The Counsel for the parties state that the matter is fixed before the Trial Court on 06.03.2023. An authenticated copy of this order made be produced on the said date. If the costs are deposited before the said date, then, the matter can proceed for evidence of the petitioner. However, if the costs are to be deposited within six weeks period, now allowed, the Trial Court should grant a suitable accommodation only for this purpose.

15. The rule is made absolute in the above terms.

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

M. S. SONAK, J.

NITI K
HALDANKAR

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NITI K HALDANKAR
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