

Meena

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.43 OF 2021

AMIOTO RODRIGUES

... Petitioner.

Versus

ELVINO DIAS

... Respondent

Mr Rohit Bras De Sa and Mr. Prataprao Naik, Advocates for the petitioner.

Mr Abhijit Kamat, Advocate for the respondent.

CORAM: BHARAT P. DESHPANDE, J.

DATED: 23rd February, 2023

P.C:

- 1.** Heard Mr Rohit Bras De Sa, learned Counsel for the petitioner and Mr Abhijit Kamat, learned Counsel for the respondent.
- 2.** The petitioner is challenging the impugned order dated 26/02/2020 passed below Exhibit-77 in Regular Civil Suit No.28/2015/A, by which the petitioner/defendant is directed to delete some averments in his affidavit in evidence which refers to the person by name Tajuddin Hamid Shaikh.
- 3.** Mr De Sa would submit that initially said Tajuddin was impleaded as defendant No.2. However, the said order was challenged before this Court by the respondent/plaintiff in Writ Petition No.572 of 2017. The said Writ

Petition was disposed on 04/10/2017 on some concession. He submits that the written statement filed by the petitioner/defendant still refers to Mr. Tajuddin Hamid Shaikh and that a reference of such person is necessary in order to effectively defend the suit.

4. Mr Kamat appearing for the respondent would submit that the only grievance of the respondent is that he may not be allowed to cross-examine and confront the defendant/petitioner with regard to the averments which the learned trial Court has directed the petitioner to delete from the affidavit.

5. Having heard the learned Counsel for the respective parties and on consideration of the impugned order, the order passed by this Court in Writ Petition No. 572/2017 dated 04/10/2017, one thing is clear that a reference of Mr Tajuddin in the written statement filed by the petitioner is still on record and the same has not been deleted. No doubt the said Tajuddin is not impleaded as party to the proceedings. Therefore, the petitioner who has filed his written statement, is entitled to prove his defence on the basis of pleadings appearing in the written statement.

6. No doubt the respondent agreed before this Court in Writ Petition No.572/2017 that he would delete the averments/allegations made in the plaint in connection with Mr Tajuddin Shaikh and accordingly invited order dated 04/10/2017. It has to be kept in mind that the order dated 04/10/2017 passed by this Court is not on merit but only on the submissions made by the present respondent claiming that he will be deleting such averments in the plaint. There was no condition on the

petitioner/defendant to delete the respective allegations/averments in the written statement wherein reference is made to Mr Tajuddin.

7. The impugned order therefore clearly requires interference as it is going to affect the specific defence raised by the petitioner in the said civil suit.

8. It is made clear that respondent/plaintiff is having every right to cross-examine the petitioner/defendant on the contents of the said affidavit including the fact of confronting him with the documents as provided under the evidence Act and in accordance with law.

9. Having said so, the impugned order is required to be quashed and set aside.

10. The appeal stands allowed. The impugned order dated 26/02/2020 below Exh.77 in Regular Civil Suit No.28/2015/A pending before Vasco Court is thereby quashed and set aside. Affidavit in evidence filed by the petitioner/defendant is retained on the record. The respondent is at liberty to cross-examine the petitioner on all aspects mentioned in the said affidavit in accord with law.

11. The petition stands disposed of. No order as to costs.

BHARAT P. DESHPANDE, J.

MEENA
VISHAL
BHOIR

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VISHAL BHOIR
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