

Shakuntala

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.325 OF 2023

Mr. Sada Ana Bagkar
Son of Ana Bagkar, 56 years of age,
Resident of H.no. 1165, Baag Ward,
Morjim Pernem, Goa. ... Petitioner

V/s

BANK OF BARODA
A Banking Company Constituted under
the banking Companies (Acquisition and
transfer of Undertaking) Act, 1970, having
its Head office at Mandovi, Baroda, &
Corporate Office at Baroda Corp.Centre,
C-26, G-Block, BKC Mumbai, & Branch
Office at Afonso Residency, Santa Cruz-
Taleigao Road, Taliegao Tiswadi Goa, 403002,
Represented through its Power of Attorney
Holder, Mr. Pramod R. Bharad, Chief Manager,
Bank of Baroda, Panaji GoaRespondent

Mr. A. Naik, Advocate for the petitioner.

Mr. P. Karpe with Ms. Samiksha Narvekar for the Respondent.

CORAM:- BHARAT P. DESHPANDE, J.

DATED :- 20th December, 2023

ORAL JUDGMENT

1. Heard Mr. A. Naik for the Petitioner and Mr. P. Karpe for the Respondent.
2. Rule.

3. Rule is made returnable forthwith. Heard the parties with consent for final disposal.

4. Order impugned in the present Petition is rejection of recall of plaintiff's witness for further cross examination.

5. Mr. Naik appearing for the Petitioner/Defendant submits that when the matter was fixed for cross examination of PW-1, he was having some personal difficulty and therefore he instructed his junior colleague to cross examine PW-1 partly and to request for further time. He submits that his junior colleague only put suggestions to PW-1 and thereafter the cross of PW-1 was closed. The Petitioner/Defendant filed an application for recall of PW-1 by disclosing specific grounds which are found in para no. 2 and 3. The Learned Trial court by its impugned order dated 02.05.2023 rejected such application and thereby denied the opportunity to cross-examine PW-1 effectively. He submits that the Petitioner/Defendant has raised specific defence in the Written statement claiming that no loan was advanced to him. Since he was having personal difficulty, the junior colleague cross-examined PW-1 only with regard to suggestions. He thus submits that an effective opportunity was not given to cross-examine PW-1.

6. Per contra, Mr. Karpe appearing for Respondent would submit that the impugned order passed by the Trial Court needs no interference as no case is made out for recall of the witness. He placed reliance in the case of **Ram Rati V/s Mange Ram (D), through Lrs.**

and Ors. Civil Appeal No. 1486/2016 decided by the Apex Court on 23.02.2016 reported in **(2016) 11 SCC 296**.

7. Rival contentions fall for determination.

8. In para No. 8 of the impugned order, the learned Trial Court has mentioned the specific dates on which the matter was adjourned for evidence. Record shows that examination in chief of PW-1 was recorded on 30.11.2021. On three subsequent dates the defendants sought time and the same was granted. On 13.04.2022, the witness was present in the Court, however, the matter was kept back and thereafter the witness disappeared stating that his advocate will be coming. The Learned Trial Court has specifically observed and recorded in the deposition on 13.04.2022 that the witness disappeared from the Court at around 04.00 p.m. The learned Trial Court granted final opportunity to the Plaintiff/Respondent to lead further evidence and the matter was adjourned to 29.06.2022.

9. The application for recall was filed disclosing the specific reasons and supported by the affidavit of the defendant. It is no doubt true that on 29.06.2022 the junior colleague of Mr. Naik conducted cross examination of PW-1. Perusal of such cross examination reveal that only suggestions were put to the witness, however, the learned Trial Court closed the cross examination of PW1. Admittedly the learned Junior Colleague did not request for further time for cross examination. A specific defence raised by the Defendant/Respondent in the written statement is not mentioned in

the cross examination which was conducted by the junior colleague of Advocate for the Petitioner. This is the reason which is stated in para 2 of the application for recall of PW-1.

10. In **Ram Rati (Supra)** the Plaintiff after examining himself and his witnesses and after completion of cross examination filed an application for recall of the witness which was opposed by the Respondent. In that context Apex Court has observed that the party who is already examined himself and whose cross examination is completed cannot be allowed to recall/re-examine in order to fill up the lacunas. The matter in hand is totally different wherein the application is not filed by the plaintiff but by the Defendant with the prayer to recall PW-1 to effectively cross-examine the said witness.

11. Thus the ratio laid down in **Ram Rati (Supra)** will not be helpful to the Respondent.

12. Cross-examination of PW-1 started only on 29.06.2022 and admittedly the junior colleague of the Advocate for the Petitioner/Defendant conducted such cross examination and that too by putting only suggestions. This aspect has been ignored by the Trial Court while passing the impugned order. The issues are already framed showing specific defence. For the purpose of effective cross examination, opportunity ought to have been given to the Defendant by imposing some costs.

13. Mr. Naik appearing for the Petitioner and on instructions would submit that the Petitioner is ready and willing to pay cost of

Rs. 10,000/- to be deposited with the Trial Court before the next date and to cross-examine PW-1 on the next date itself. It is made clear that no further adjournments shall be granted.

14. The impugned order therefore needs interference as valuable opportunity to cross examine the witness has been denied though sufficient reasons were disclosed. Accordingly, petition needs to be allowed with conditions.

Order

Impugned order is thereby quashed and set aside. The application for recall of PW-1 stands allowed subject to deposit of cost of Rs 10,000/- by the Petitioner before the Trial Court on or before the next date of hearing. The Trial Court shall allow further cross examination of PW-1 on 03.01.2024. PW-1 shall remain present on that day. It is made clear that no further time shall be granted to the Defendant.

Rule is made absolute in above terms.

Parties shall act on the authenticated copy of this order.

BHARAT P. DESHPANDE, J.