

Esha

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 446 OF 2023

M/s Karnataka Cement Pipes Factory Eng.
and Contractors, A registered partnership
firm having its office at Plot No. 64 B, Trihal
Industrial Estate, Tarihal Hubballi, through
its partner M.S. Bidasaria, 86 years of age,
Civil Eng., R/o H. No. 92/93, Vijaynagar,
Hubballi, Karnataka. ... Petitioner

Versus

- 1) State of Goa, Through Chief Secretary
having office at Secretariat, Alto Porvorim,
Goa.
- 2) The Chief Engineer Public Works
Department, Government of Goa, Althino,
Panjim, Goa 403 001.
- 3) The Executive Engineer, Works Division
12, Sanguem, Goa. ... Respondents

Mr J.J. Mulgaonkar with Ms Deeksha Sharma, Advocates for
the Petitioner.

Mr Devidas J. Pangam, Advocate General with Ms Maria
Correia, Additional Government Advocate for the
Respondents.

**CORAM: M. S. SONAK &
BHARAT P. DESHPANDE, JJ.**

DATED: 9th AUGUST 2023

ORAL JUDGMENT: (per Bharat P. Deshpande, J.)

1. Rule. The Rule is made returnable forthwith. The matter is taken up for final disposal at the stage of admission itself with the consent and at the request of the learned Counsel appearing for the respective parties.

2. The Petitioner approached this Court with the following prayers:-

“(a) For a writ of certiorari or a writ, order or direction quashing and setting aside order/roznama dated 18/02/2023 of the learned Civil Judge Senior Division at Quepem in Arbitration Suit No. 1/2021/A.

(b) For a writ of mandamus or a writ, order or direction in the nature of mandamus directing the Court of Senior Civil Judge at Quepem to hear and decide Arbitration Suit No. 1/2021/A be heard afresh and decided on merits.”

3. It is the contention of the learned Counsel Mr. Mulgaonkar that the Arbitration Suit No. 1/2021/A, pending on the file of the learned Civil Judge Senior Division at Quepem was taken up for arguments and by Roznama dated 18.02.2023 [Annexure-A], the judgment/order was pronounced by the Presiding Officer stating that the said suit has been dismissed. He, however, submitted that though such pronouncement was made in the open Court and as mentioned in the Roznama, no judgment/order was delivered by the Presiding Officer on that date or thereafter to date.

4. The Petitioner applied for a certified copy of the impugned judgment and award vide Application dated 03.03.2023.

However, the certified copy was not furnished. The Application for a certified copy was dismissed vide order dated 12.06.2023 on the ground that the copy of the order is not ready in the Court file. He submitted that the Presiding Officer who delivered the so-called judgment and order on 18.02.2023 was subsequently transferred from Quepem Court, and her successor rejected the certified copy Application on the ground that such judgment is not available in the Court file.

5. Mr Mulgaonkar would therefore submit that the Roznama dated 18.02.2023, thereby claiming that judgment is pronounced dismissing the said suit, is not at all a judgment passed by the Court under Section 33 and Order XX Rules 1 and 2 of CPC. He then submitted that since there is no signed judgment and award dated 18.02.2023 available in the file, it cannot be considered as a judgment deciding the issues involved in the suit. He then submitted that such Roznama dated 18.02.2023 by no stretch of the imagination could be considered as a reasoned judgment disposing of the said Arbitration Suit No. 1/2021, and if it remains on record, it violates the rights of the Petitioner to have his claims adjudicated in accordance with the law. He then submitted that the Petitioner is unable to file any Appeal proceedings against such Roznama order, which again violates his rights to challenge such decision before the Appellate Court.

6. The learned Advocate General, who appears along with Ms Maria Correia, the learned Additional Government Advocate appearing for the State, submitted that since there is no record to show that any reasoned judgment/order was passed by the learned

Presiding Officer, the Roznama dated 18.02.2023 cannot be considered as a judgment.

7. When the matter was taken up on 08.08.2023, we have passed the following order:-

“1. Heard Mr J.J. Mulgaonkar for the petitioner. Learned Advocate General appears along with Ms M. Correia for the State.

2. The complaint in this petition is that the learned Adhoc Civil Judge, Senior Division at Quepem passed a roznama order on 18.02.2023 indicating that the application under Section 34 of the Arbitration Act is dismissed. However, till date, no copy of the order is being furnished to the petitioner.

3. Considering our earlier order dated 02.01.2023 in Suo Motu Writ Petition no.2/2022, we direct the Principal District Judge, South Goa, to immediately call for the records and proceedings in Arbitration Suit No.1/2021 from the Court of Adhoc Civil Judge, Senior Division at Quepem along with an application for certified copy dated 03.03.2023 and the orders made thereon from time to time and to transmit such record to this Court. We request the Principal District Judge, South Goa at Margao, to complete the above exercise latest by 09.08.2023.

4. The Registry to immediately send this order by email to the Principal District Judge, South Goa at Margao. The Registrar (Judicial) to telephonically inform the learned Principal District Judge, South Goa, about this order and the action to be taken based thereon.

5. We place this matter for further consideration on 09.08.2023 at 2.30 p.m.”

8. The original Records and Proceedings of the Arbitration Suit No. 1/2021 are placed before us. On perusal of the records

as well as the Application for certified copies, it is crystal clear that initially, the Petitioner instituted the proceedings under Section 34 of the Arbitration and Conciliation Act, 1996, challenging the arbitral award dated 03.04.2019, before the Commercial Court, South Goa, Margao, which was then transferred to the Commercial Court at Quepem wherein it was registered as Arbitration Suit No. 1/2021. The Petitioner filed this Arbitration Suit No. 1/2021 against the present Respondent Nos. 2 and 3. The Roznama dated 06.08.2020 reveals that as the dispute is a commercial dispute and in view of the notification issued by the Government of Goa dated 05.05.2020, constituting Commercial Court at Quepem having jurisdiction over Sanguem where the present contract was signed, the matter was transferred to the Senior Civil Judge at Quepem for adjudication.

9. The Roznama dated 24.06.2021 shows that these proceedings were registered as Arbitration Suit No. 1/2021 at Quepem and were placed before the Presiding Officer, Ms Aruna P. Fernandes, the designated Commercial Court Judge. The matter was adjourned from time to time for the filing of written arguments and, thereafter, for oral arguments. The oral arguments were heard partly, and thereafter, the matter was adjourned from time to time for further arguments. The matter was then adjourned for clarification as found in the Roznama dated 24.11.2022.

10. Finally, the Roznama dated 18.02.2023 speaks as under:

*“Called out today before the Court.
Adv. C. Mascarenhas present for applicant.
Adv. D.D’Mello present for respondent.*

*Exbt A-43 Judgment pronounced. Application under sec.
34 of Arbitration Act is dismissed.
Pronounced in the Open Court.
Proceedings closed.*

*sd/-
Judge”*

11. On perusal of the entire original records and proceedings of Arbitration Suit No. 1/2021, it is clear that the last exhibit in the file is Exhibit-42, which is an Application for adjournment. Though in the Roznama dated 18.02.2023, Exhibit-43 is given to the judgment, no such document is found in the file even as of the date.

12. The Petitioner applied for a certified copy vide Application dated 03.03.2023. The original Application for a certified copy is also placed before us along with all notes. The first date for the supply of copy was given on 06.03.2023. The learned Presiding Officer extended the time till 09.03.2023, and such time was extended from time to time till 06.06.2023.

13. The Application and the endorsement of the learned Presiding Officer extending the time with reasons are quoted below for ready reference:

*“IN THE COURT OF THE CIVIL JUDGE SENIOR
DIVISION AT QUEPEM*

Arbitration Suit No. 1/2021/A

*Karnataka Cements Applicants
Vs.
State of Goa Respondents*

MAY IT PLEASE YOUR HONOUR

Be pleased to issue urgently certified copy of Judgment/Order dated 18.02.2023 passed in the case.

The copy is for appeal purpose.

03.03.23.

*Sd/-
Adv. For Applicants
Adv. Chelsa Mascarenhas
9579471287"*

*Appln. Reg. U. No. 139/2023 (u.65/23)
Estimated costs Rs. 50/-
Deposited under R. No. 53335
Dated 03/03/2023
Date given for delivery 06/03/2023*

*Received
Amount of
Rs.50/-*

*sd/-
Applicant*

O

*Sd/-
13.6.2023*

*6/3/2023
Issue/Time is extended till 9/3/2023*

*sd/-
Adhoc SCJ, 'A' Court, Quepem*

O

*9/3/2023
Time extended till 17/3/2023*

*sd/-
Adhoc SCJ, 'A' Court, Quepem*

O

Time is extended till 30/3/2023

*sd/-
Adhoc SCJ, 'A' Court, Quepem*

O

Time is extended till 13/4/2023

*sd/-
Adhoc SCJ, 'A' Court, Quepem*

Arbitration Suit No. 1/2021/A

Respectfully submitted,

*That the hard copy of the Judgment
and Order dated 18/2/2023 is not ready*

and not received till date and as such certified copy of the same cannot be issued.

Hence placed for Order.

*Sd/-
UDC*

*Quepem
Dated 26/05/2023*

O

It is seen that there is delay in issuing copy as unready. Hence time is extended till 6/6/2023

*sd/-
Adhoc SCJ, 'A' Court, Quepem*

O

In view of order copy not ready in the Court file the present Application stands dismissed. Party to apply fresh when order copy will be ready in the file. Nazir to refund the amount if any.

*sd/-
12/06/2023
SCJ 'A' Court, Quepem*

14. It seems that Ms Aruna P. Fernandes was then transferred from Quepem Court in June 2023, and in her place, another Presiding Officer was posted by the name of Ms Artikumari Naik. The present Presiding Officer, Ms Artikumari Naik, dismissed the certified copy Application filed by the Petitioner only on the ground that the order copy is not ready in the Court file and the party is to apply afresh when the order copy is made ready. This order of dismissal of the certified copy Application is also incorrect. In fact, the present Presiding Officer ought to have informed the learned Principal District and Sessions Judge about the absence of signed judgment in the record.

15. Similar was the fate of the Application filed on behalf of the Respondents, which is also clear from the certified copy Application dated 18.02.2023 and the endorsement of the learned Presiding Officer on it, thereby extending the time till 06.06.2023 and finally rejecting it on 12.06.2023.

16. Unfortunately, the same Presiding Officer was found indulging in such type of activities earlier, as per the report received from the Principal District and Sessions Judge, South Goa, Margao, dated 01.10.2022. Such a report dated 01.10.2022 of the learned Principal District and Sessions Judge, South Goa, Margao, was considered, and this Court initiated Suo Motu Writ Petition No. 2/2022. In the said report, several matters were found without signed judgments/orders. The list of the matters wherein the said Presiding Officer was found indulging in such practices is recorded in paragraph 7. In all, 8 civil matters and 7 criminal matters were observed as disposed of without there being signed judgments/orders in the respective files. Suo Motu Writ Petition No. 2/2022 was disposed of on 02.01.2023 by setting aside all such Roznama orders and remanding them to the respective Courts for adjudication.

17. In Criminal Writ Petition No. 73/2022, this Court had to again consider similar circumstances with regard to the same Presiding Officer as it was found that though the matter was shown as decided, however, there was no signed judgment/order found in the file. Even the learned Principal District and Sessions Judge, South Goa, Margao, was directed to conduct an inspection of the Quepem Court and to submit the list of matters wherein

such discrepancies were found, i.e. absence of final order/judgment in the file.

18. The matter does not end here as Criminal Writ Petition No. 73/2022 was filed before the Co-ordinate Bench on the ground that though the matter under Section 138 of the Negotiable Instruments Act, 1881, was decided by convicting the accused, no signed judgment and order was found in the file. In that Petition, the Co-ordinate Bench passed the order on 11.07.2022, which reads thus:

“20. Therefore, we hereby direct the Judicial Magistrate First Class, "A" Court at Quepem to provide the Petitioner as well as the accused persons the certified copies of the Judgments and Orders dated 5th March 2021 within a maximum period of 10 days from the date of receipt of an authenticated copy of this order. The Registry to ensure that an authenticated copy of this order is served upon the J.M.F.C. at Quepem at the earliest against her endorsement of receipt. The copy may be served through the Principal District and Sessions Judge, South Goa. The J.M.F.C. at Quepem should file a compliance report in this case on or before 7th September 2022.

21. This Order and the report of the Principal District Judge must be placed before the Registrar (Admin) to enable him to do the needful on the administrative side by following the law.”

19. In spite of these directions to issue a certified copy of the judgment within a period of 10 days from the receipt of the order of this Court, the same was not complied with. The Petitioner herein, namely, Mr Shaikh Mohammed Tauseef, had to approach this Court again by filing Criminal Writ Petition No. 578/2022, claiming therein that a certified copy of the judgment/order was not furnished to him.

20. The Co-ordinate Bench of this Court, while deciding Criminal Writ Petition No. 578/2022, observed thus:

“41. Considering the unfortunate facts and circumstances, the submissions made, and the law on the subject, we quash and set aside the orders convicting the respondents in Criminal Case No. 161/NI/OA/2016/A and Criminal Case No. 162/NI/OA/2016/A and remand and restore the two cases to the file of the learned J.M.F.C., B Court at Quepem. Accordingly, these two cases shall stand transferred from A Court to B Court. For all this, we invoke the provisions in Article 227 of the Constitution.

42. Upon remand, the learned J.M.F.C., B Court must, based on the evidence already led in the matters, rehear the parties through their Counsel and pass final Judgment and order in terms of the law most expeditiously mindful of the directions in Anil Rai (supra). Copies of such final Judgment and orders should be furnished immediately to the parties. Considering the peculiar facts and circumstances, the learned J.M.F.C., B Court is directed to complete this exercise as expeditiously as possible, and no later than six weeks from the date an authenticated copy of this order is filed before it.

43. Since we have quashed the conviction orders and remanded the cases before learned J.M.F.C., B Court, Quepem, the Criminal Appeal Nos. 52/2021 and 53/2021 instituted by some of the respondents seeking the same relief are rendered infructuous. Therefore, even those criminal appeals are hereby disposed of. Parties should produce an authenticated copy of this order before the learned Sessions Court taking up these two appeals so that even these two appeals can be marked as disposed of.

44. In our Order dated 11.07.2022, disposing of Criminal Writ Petition No.73/2022, we had directed that the said order and the report of the Principal District and Sessions Judge be placed before the Registrar (Administration) to enable him to do the needful on the administrative side by following the law. Similarly, we now direct that a copy of this order and the report dated 01.10.2022 made by the Principal District and Sessions Judge be placed before the Registrar (Administration) so that he can do the needful in terms of the law. With reluctance, we adopt this course, as otherwise, we think

that we too might be failing in our duties of superintendence.

45. On behalf of the judicial institution, we sincerely apologize to the parties for the prejudice they suffered due to the non-preparation and non-furnish of the certified copies by the learned J.M.F.C., A Court, Quepem, even though she convicted and sentenced some of the respondents in the above two cases. She suspended the sentence. But without the judgment, the convicted accused could not pursue their appeals, nor could the Petitioner recover the compensation awarded. As a result, the appeal Court could not proceed with the appeals, and the Petitioner had to institute two writ petitions before us for redressal.

46. The rule is made absolute in the above terms. There shall be no order for costs.”

21. In the backdrop of the above proceedings and on receipt of the consolidated report from the learned Principal District and Sessions Judge, South Goa, Margao, this Court took up the matter under Suo Motu Writ Petition No. 2/2022 and passed a detailed order dated 02.01.2023 observing that such Roznama showing that the judgment is pronounced, but without any signed copy of the judgment available on record, cannot be termed as judgment even under the provisions of Civil Procedure Code or Code of Criminal Procedure and therefore, such orders passed under the Roznama need to be quashed and set aside. We even directed the Registrar (Administration) of this Court to place the matter before the Administrative Committee for taking suitable action against the concerned Presiding Officer.

22. In spite of so many instances and the decision passed by this Court, it seems that the concerned Presiding Officer has not

taken any care to keep the judgment ready in all respects before pronouncing it, which is the mandate as per Order XX of CPC and the relevant provisions under the Civil Manual, which is most disturbing. The learned Presiding Officer though claiming the points for disposal of such matters in her Returns, did not bother to keep the judgments ready in all respects.

23. The learned Principal District and Sessions Judge, South Goa, Margao, is therefore required to look into the Returns filed by the concerned Presiding Officer in connection with all these matters wherein the judgments and orders are not found in the file, but the points are claimed towards disposal of such matters. It also amounts to giving a false declaration in the Returns. If it is found that the Presiding Officer has claimed the points towards disposal of such cases on merits without actually disposing of the matters by keeping the signed judgment/order ready, it would amount to giving a false declaration.

24. We, therefore, direct the learned Principal District and Sessions Judge, South Goa, Margao, to thoroughly verify the monthly and four monthly Returns of the concerned Presiding Officer, Ms Aruna P. Fernandes, while working at Quepem or any other place in South Goa and to prepare a report as to whether she claimed the points towards disposal of the matters on merits wherein judgments/orders are not found in the file. Such a report shall be submitted within a period of 15 days from the date of the receipt of this order.

25. Coming back to the present matter, it is clear that the Roznama dated 18.02.2023 depicts that the judgment is

pronounced; however, there is no signed judgment found in the entire record. Thus, such Roznama dated 18.02.2023 cannot be considered as a judgment of the Court by deciding the matter on merits. The Roznama further shows that an Application under Section 34 of the Arbitration Act was dismissed, and the proceedings were closed. Such order in the Roznama is without reasons, i.e. there is no signed judgment on record and, thus, cannot be considered as the judgment of the Court.

26. For the reasons stated above, we are constrained to allow the Petition as per prayer clauses (a) and (b) quoted above.

27. Since Ms Aruna P. Fernandes, the learned Presiding Officer, is now transferred from Quepem Court to Panaji Court and in her place Ms Artikumari Naik is now presiding over the said Court and as the parties to the Petition have no objection to arguing the matter afresh before the present Presiding Officer, the present Presiding Officer could be directed to hear the matter afresh. Accordingly, we quash and set aside the Roznama order dated 18.02.2023 and re-store the Arbitration Suit No. 1/2021 on the file of Civil Judge Senior Division/Commercial Court, Quepem. The present Presiding Officer is directed to hear the parties afresh and decide the matter on its own merits as expeditiously as possible.

28. Before parting with the present judgment, we would like to sincerely apologise to the parties to the present Petition for the inconvenience and prejudice caused to them due to such non-preparation of the judgment by the concerned Presiding Officer.

This is the third time we are apologising for identical lapses on the part of this Presiding officer.

29. Record and Proceedings of the Arbitration Suit No. 1/2021, along with the original Applications for a certified copy and envelope containing four keys, shall be returned to the concerned Court.

30. The Rule is made absolute in terms of prayer clauses (a) and (b), as quoted above.

31. The Registrar (Administration) of this Court is to forward a copy of this judgment to the learned Registrar General with a request to place the matter before the Administrative Committee/ the Hon'ble the Chief Justice of this Court for taking suitable action.

32. A copy of this order shall also be forwarded to the learned Presiding Officer at Quepem Court and the learned Principal District and Sessions Judge, South Goa, Margao, for necessary compliance.

BHARAT P. DESHPANDE, J.

M. S. SONAK, J.

VAIGANKAR
ESHA SAINATH

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