

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA

**WRIT PETITION NO.37 OF 2020
AND
STAMP NUMBER (APPLN.) NO.802 OF 2020**

Surendra Gajanan Samant,
Son of late Gajanan Samant,
aged 65 years,
Indian, Retired Pensioner,
Resident of House No.19, Sashtiwada,
Near Mahamaya Temple,
Bordem Bicholim Goa 403 504

... Petitioner

Versus

Shamsundar Mahadev Samant
son of Mahadev Samant, aged 75 years,
Indian National, resident of House number 9/1,
Post Assonora, Latambarcem,
Bicholim Goa 403 503

...Respondent

Mr. Surendra Gajanan Samant, Applicant/Petitioner present in person.

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

**Reserved on : 8th FEBRUARY 2023
Pronounced on: 13th FEBRUARY 2023**

P.C.

1. Heard Mr Surendra Gajanan Samant, in person.
2. Mr Samant seeks a review of the order dated 13.02.2020 by which the coordinate Bench comprising (Dama Seshadri Naidu &

Nutan D. Sardesai, JJ) declined to hear the Petitioner Mr Samant, in person in Writ Petition No.37 of 2020.

3. Before the above Division Bench made the order dated 13.02.2020, the same Division Bench made the following order on 23.01.2020.

“Surendra Gajanan Samant, wants to prosecute the Writ Petition pro se. Initially, when it was listed before the Division Bench, it felt that the Petitioner could not effectively assist the Court. It has also recorded that the Petitioner was adamant in insisting that he had a right to fight his own case. In that context, the learned Division Bench has referred the matter to the Committee of the Court to assess Samant's competency to understand the judicial proceeding and to conduct the case with dignity and decorum, as required by the legal profession.

2. Later, on 06.12.2019, the Committee interacted with Samant and submitted its report. It has concluded that Samant is not in a position to understand the proceedings, nor can he assist the Court effectively. It has also recorded about his aggressive conduct.

3. Under these circumstances, I have suggested to Samant that the Court is desirous to appoint an advocate for him, and he can as well instruct the learned Advocate, so that the Court could adjudicate the matter. In reply, Samant retorted by saying that the Court may, if it wants, have the assistance of an advocate, but he needs no assistance to argue the matter. We have, then, told him that so long as Chapter IVA of the Bombay High Court Appellate Side Rules stands, Samant's right to represent himself and to argue the matter pro se is not a carte blanche; it is subject to that Chapter. Evidently, he has

not challenged the Rule that makes his right to argue the case pro se subject the Committee's assessment and Court's discretion. As we have noticed, Samant is hard on hearing, too. Because of that, it is very difficult for him to answer the Court's queries, if any, unassisted.

4. But Samant insists that we should hear him, and none else. For the sake of record, we extract Chapter IVA of the Bombay High Court Appellate Side Rules, 1960:

" CHAPTER IV -A

Norms for Presentation and Conduct of proceedings in person by parties

1. Whenever a party wants to appear and argue the case in person, he/she shall first file an application alongwith the proceedings, seeking permission to appear in person. The application shall indicate reasons as to why he/she cannot engage an Advocate and wants to appear and argue in person, and if he is willing to accept an Advocate, who can be appointed for him by the Court.

2. Such application as filed along with the proceedings shall be placed before a Committee of two Officers of the Registry, who are working on deputation from the State Judicial Service, to be nominated by the Honourable the Chief Justice. The Committee shall scrutinise the matter/proceedings filed by Party-in-person so as to ensure that the Party-in-person has complied with the requirements of the Bombay High Court Appellate Side Rules, 1960 and that the party-in-person has not made any objectionable averments/ allegations and has not used unparliamentary language in the pleadings. The Committee shall interact with the Party-in- person and give opinion by way of Office Report whether Party-in- person will

be able to give necessary assistance to the Court for disposal of the matter or an Advocate may be appointed as Amicus Curiae.

3. In case a Party, who wishes to defend his matter/proceedings in person as respondent/opponent, the Court may direct such party to appear before the above committee and the above Committee shall ensure and certify that such person is 'Competent' to assist the Court in person.

4. (a) If the certificate is not issued in both the cases mentioned in Rule 2 and 3 above and the party-in-person is lawfully entitled to be referred to the High Court Legal Aid Services Committee in accordance with law, the same will be referred to the Committee for offering legal services to the concerned litigant.

(b) If the concerned litigant is not entitled under law to get assistance of Legal Aid Services Committee, he will be asked to appoint a lawyer to represent his case.

(c) In the event, it is certified that party-in-person is 'competent' to assist the Court in person, the party-in-person shall give an undertaking that he shall maintain decorum of the Court and shall not use or express objectionable and unparliamentary language or behavior during the course of hearing in the Court or in the Court premises or in the further pleadings.

5. If the party-in-person fails to abide by his Undertaking as above, Contempt Proceedings may be initiated against him and/or appropriate costs shall be imposed on him and/or the concerned party will not be allowed to appear in any case as party in person for such period as the Court may think fit.

6. These Rules will not apply in the cases of applications for temporary bail, parole, furlough and habeas corpus.

7. Notwithstanding anything contained in these Rules, the concerned Court before which the matter lies, may, in its discretion, permit a litigant/s to appear in person and conduct the proceedings:

Provided, that the Court may, in its discretion, require the concerned litigant/s, first to appear before the Scrutiny Committee under Rule 2 or Rule 3, as the case may be."
(italics supplied)

5. Under these circumstances, we hold that Samant is not in a position to assist the Court with decorum and dignity as required. And so long as Chapter IVA of the Bombay High Court Appellate Side Rules, 1960, stands, we can refuse to hear him in person unless he has the services of an advocate to be appointed by himself, or by the Legal Service Authority, or by this Court.

6. We therefore, adjourn this matter by three weeks to enable Samant to take remedial steps as indicated in Chapter IVA of the Bombay High Court Appellate Side Rules, 1960."

4. Finally, on 13.02.2020, the coordinate Bench made the following order :

"On the last occasion, we passed a detailed order setting out the Rules governing pro se proceedings. We also expressed our difficulty in letting the Petitioner prosecute the case in person. The Rules do preserve the Judge's discretion to hear the party in person despite the Committee's recommendation to the

contrary. Here we find the Petitioner's conduct truly unrestrained, if not unruly.

2. Today, too, the Petitioner insisted that he should be allowed to argue in person. When we have put certain queries, he struggled to answer because of his hearing problem. Despite that, he has remained unrelenting in his insistence. He has told us mafias are on the prowl, and we should not support those mafias. Then, he has dropped every name that matters, including that of the Hon'ble Chief Minister, and asserted that the Judges should not be in league with the powerful people in ignoring the common man's rights. In one word, his allegations are unchecked and unrelated to the issue before us. And they are without any basis, too.

3. Under these circumstances, we decline to hear the Petitioner in person. We, therefore, adjourn the matter by two months. It is to give one more opportunity to the Petitioner so he may reconsider his decision and either engage a counsel himself or allow the Court to appoint one.

4. Post the matter in two months.”

5. At the stage of hearing the review petition, we again offered the Petitioner some reasonable time to engage an Advocate to argue the matter. We also informed Mr Samant that if he wished, an Advocate could be appointed to appear on his behalf from the panel under the Legal Aid Scheme. However, Mr Samant bluntly stated that he did not trust any lawyer and maintained that he was competent to argue his own case.

6. This Bench and the coordinate Benches, out of consideration for Mr Samant's age, have spent considerable time on this matter. From the orders made by the coordinate Bench, it is evident that Mr Samant was persuaded to appear through an Advocate. Even we tried to explain to Mr Samant that he should engage the services of an Advocate, and if necessary, even Advocate from the Legal Aid Panel or otherwise could be provided to Mr Samant. But we are sorry to record that he remains adamant even though Mr Samant has valued the reliefs in his Petition at rupees two hundred crores. We are also unsure whether this Petition is a ploy to delay the inventory proceedings pending in the Inventory Court.

7. Although there is no case made out to review the order dated 13.02.2020, we heard Mr Samant, who is a senior citizen, with utmost patience. He referred us to his Petition and submitted that Article 2044 of the Portuguese Civil Code continues to apply despite coming into force of Goa Succession, Special Notaries and Inventory Proceedings Act, 2012. He pointed out that Article 2044 of the Portuguese Civil Code prescribes a time limit of 10 days in which the inventory proceedings have to be filed. He submitted that since the 2012 Act had not provided for any limitation, Article 2044 of the Portuguese Civil Code 1867 would apply.

8. In the interest of justice, we have examined and evaluated the Petition filed by Mr Samant. We are sorry to say that there are no

proper pleadings or foundations in the Petition. Mr Samant, despite his insistence to the contrary, was unable to explain his case or offer any precedents in support of his contentions. At one stage, he suggested that we should issue appropriate orders to the Legislature to amend the 2012 Act. At another stage, he suggested that the inventory proceedings RIP No. 96/2017 instituted by Respondent against him should be declared "*unconstitutional and unlawful*". His prayer is to this effect.

9. Considering the pleadings or lack of pleadings and the insistence on Mr Samant's part to argue his matter in person, even though it was plain that Mr Samant was not in a position to do the same, we are left with no alternative but to dismiss this Petition. Our offer for a Lawyer from the legal aid panel or even otherwise has been spurned by Mr Samant. There is no point in placing any Advocate or Counsel in an embarrassing position given Mr Samant's opinions which he repeatedly voiced. Deciding the matter on merits in such circumstances would also not appear proper because such a decision might preclude serious and well-presented challenges in the future.

10. Therefore, we clarify that such dismissal is without going into the merits of the matter because such dismissal should not be taken as our decision on the argument now raised. In short, we are declining to entertain this Petition considering the state of pleadings and state of assistance from Mr Samant.

11. For all the above reasons, we decline to entertain this Petition and dismiss the same. The Review Application under Stamp Number (Appln.) No.802 of 2020 is also disposed of.

12. There shall be no order for costs.

BHARAT P. DESHPANDE, J

M. S. SONAK, J

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