

Esha

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 122 OF 2020

Dinesh Vaman Kunde, Proprietor M/s
Umesh Service Center, Rua de Ourem,
Nevgi Nagar, Panaji-Goa. ... PETITIONER

Versus

1. Damodar Vithal Naik, R/o H. No.
653, Near Chinmay Ashram, Gogol
Housing Board, Margao, Goa.
2. Hindustan Petroleum Company
Limited, having its office at Zuari
Nagar, Vasco da Gama, Goa. ... RESPONDENTS

Mr. Sahish Mahambrey, Advocate for the Petitioner.

Mr. Vibhav R. Amonkar, Advocate for Respondent No. 1.

CORAM: BHARAT P. DESHPANDE, J.

DATED: 2nd NOVEMBER 2023

ORAL JUDGMENT:

1. Heard learned Counsel Mr. Mahambrey for the Petitioner and Mr. Amonkar, learned Counsel appearing for Respondent No. 1. Respondent No. 2 served, but absent.
2. Rule. Rule is made returnable forthwith. Heard finally with consent of the learned Counsel for the parties.

3. The Petition is filed challenging the order passed by the Trial Court dated 27.09.2019, thereby rejecting the Application [Exhibit D-12] for extension of time for filing the written statement.

4. Mr. Mahambrey would submit that basically, it was the fault of the Advocate appearing for the Defendant/Petitioner, who failed to prepare and file a written statement within the stipulated period. He submits that an Application for extension of time was initially allowed. However, when the matter was fixed on 25.06.2019, an Application was again filed for extension of time as it was not beyond 90 days. This Application was rejected and thereafter, two hearings took place.

5. On 27.09.2019, the Petitioner filed an Application along with the affidavit of the Advocate praying to grant time to file a written statement. This was objected to by the Plaintiff and accordingly, the Trial Court rejected it on two fold grounds. First, the written statement was not attached along with the Application and second, after the earlier Applications were rejected, in between, the matter was taken up on two occasions, no steps were taken by the Defendants.

6. Mr. Mahambrey submits that the suit is for recovery of money and serious prejudice would be caused to the Petitioner, if the Petitioner is not allowed to file the written statement and contest the suit on merits.

7. Mr. Amonkar submitted that there is no sufficient ground, which is disclosed in the Application for grant of extension of time to file the written statement. He further submits that the matter is being unnecessarily delayed. It is submitted that even till date, evidence of the parties is yet to start. Mr. Amonkar points out that the Trial Court has framed the issues.

8. Though there is one more Defendant i.e. Respondent No. 2 herein, the matter is proceeding ex-parte before the Trial Court. Thus, it is surprising as to how and why the Trial Court framed the issues specifically when there is no written statement filed on behalf of any of the Defendants. Thus, clearly ignoring the provision of Order XIV of the CPC.

9. Be that as it may, since the suit is still at the stage of evidence, interest of justice demands that an opportunity should be given to the Petitioner/Defendant to contest the matter on

merits. Accordingly, the Petitioner could be permitted to file a written statement subject to payment of costs of ₹25,000/-.

10. Mr. Mahambrey submits that the costs will be paid by the Petitioner to Respondent No. 1 and will file the written statement on or before 30.11.2023 before the Trial Court.

11. In view of the above, the impugned order is hereby quashed and set aside. The Petitioner is permitted to file the written statement on or before 30.11.2023, subject to payment of costs of ₹25,000/- by the Petitioner/Defendant to Respondent No. 1/Plaintiff. On filing of such written statement and payment of costs to the Plaintiff, the Trial Court shall decide the suit as expeditiously as possible by giving opportunity to both the sides.

12. Rule is made absolute in the above terms. The parties shall bear their own costs.

13. The Petition stands disposed of in the above terms.