



Jose

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.146 OF 2025

SUCHITA NUNES

... Petitioner.

Versus

JOSEPH A. WILLIAMS (SINCE
DECEASED THR. LRS.)

... Respondents.

Mr. L. Joseph Deva, Advocate for the Applicant.

Mr. Raunaq Rao, Advocate for the Respondents.

CORAM: VALMIKI MENEZES, J.

DATED: 8th October, 2025

ORAL ORDER:

1. This petition takes exception to an order dated 14.01.2025 passed by the Civil Judge Senior Division at Mapusa in Special Civil Suit No. 33/2023/C dismissing the application at Exhibit 79 filed by the Plaintiff, to issue summons to an Advocate to the signature on a document. The petition has been filed, in the following background facts:

- a) The Petitioner who is the original Plaintiff, filed a suit for recovery of money. According to the plaint, the Plaintiff deposited with the Defendant certain sums of money as security, in anticipation of the Plaintiff running a Guest

House which belonged to the Defendant, pursuant to which the Plaintiff carried out certain works in the Guest House. The plaintiff seeks to recover the amounts deposited with the Defendant and the expenditure incurred on the works carried out on the structure.

- b) In the Written Statement filed by the Defendant, who later passed away on 02.06.2017, it is his case that the Plaintiff came into possession of the Guest House on 15.07.2012 and on this basis, the Defendant filed a counterclaim in which he claimed outstanding dues in the form of licence fee and costs of operation, totalling Rs.20,84,000/-.

A Written Statement to the counterclaim of the Plaintiff denies this position and takes a stand that the Plaintiff never ran the Guest House or took possession of the same.

- c) The Plaintiff completed the evidence. The sole Defendant passed away on 02.06.2017 and his legal representatives were brought on record. During the evidence being recorded of the Attorney of the legal representatives, as defence evidence, the Plaintiff sought to confront the witness DW1 Rohit Thali with a notice dated 15.12.2012, purporting to have been signed by one Advocate Satish Saudagar on behalf of the original Defendant, who is now deceased. The witness DW1 stated in cross examination that he is not aware of the notice. Nevertheless, the Plaintiff placed on record the

notice of the said Advocate and has now filed an application at Exhibit D-79 seeking summons to the concerned Advocate to prove the signature on the document. It is the Plaintiff's case in the application that proving the contents of the legal notice would throw light on the fact that the Plaintiff was never operating the Guest House.

2. It is in the light of the background facts stated above, that the Trial Court ought to have first considered whether, in the light of the fact that the Plaintiff never relied upon the document now sought to be produced in cross examination, whether the same could even be marked as 'X' for identification subject to proof, or even be taken on record.

3. Section 145 of the Evidence Act stipulates that a witness may be cross-examined as to his previous statement, which is in writing, and may also be confronted with such statement, to impeach his credibility. In the present case, in the first place, the original Defendant has passed away and was not in the witness box. Even assuming for a moment that the notice could have been treated as the Defendant's previous statement, an Attorney who represents the legal representatives, once he states that he is not aware of the contents of that notice or whether the same was issued at the behest of the Defendants, could not have been confronted with the document. That document was certainly not his previous statement and even if

it is the Plaintiff's contention that the document being purportedly issued at the instructions of the original Defendant who is now deceased, could not be considered as the Defendant's previous statement. In this case, obviously if it was the Defendant's in the Written Statement to the counterclaim that the Plaintiff had never taken possession or was never running the Guest House, reliance ought to have been placed on the document (the legal notice dated 15.12.2012), the original of which was in possession of the Plaintiffs, and at least pleaded upon by the Plaintiff. The Plaintiff perhaps could have requested for summons to the Advocate, subject to the rigours of Section 126 of the Evidence Act. In the total absence of any pleadings making reference to the legal notice dated 15.12.2012 or reliance upon the said document, it is doubtful whether the same could even be used to confront the original Defendant who is now deceased, as his previous statement. On this logic, much less could it be possible for an Attorney of the legal representatives of the deceased Defendant to be confronted of this document and now, by the application at Exhibit D-79, an attempt be made to prove its contents by summoning the Advocate, who the Plaintiff claims is the signatory of the document.

4. In these circumstances, therefore, no interference is called for with the impugned order. Petition is, therefore, dismissed. No costs.

VALMIKI MENEZES, J.