



Meena

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.563 OF 2024

Mrs. Sachi S. Naik,
52 years of age,
r/o. Anantdhara Residency,
D-1, Block -B, Mangor Hill,
Vasco- Goa.

... Petitioner.

Versus

1. Mr. Mahendra Gorule,
Major of age,
r/o. Anantdhara Residency
Co.Op. Housing Society Ltd.,
3rd Floor, Block-B, D1
Mangor Hill, Vasco- Goa.

2. Mr. Sunil Tomar,
Major of age,
r/o. Anantdhara Residency
Co.Op. Housing Society Ltd.,
2nd Floor, Block-A, D1
Mangor Hill, Vasco- Goa.

... Respondents.

Ms. Nicole Mayekar, Advocate for the Petitioner.

Mr. Galileo Teles with Ms. Rifad Ballari, Advocates for the Respondents.

CORAM: VALMIKI MENEZES, J.

DATED: 20th June, 2025

ORAL JUDGMENT :

1. The Petitioner has impugned three orders dated 13.02.2023, 06.05.2023 and 01.04.2024 passed by the Civil Judge, Senior Division at Vasco Da Gama in Regular Civil Suit No. 46/2016/B.
2. Heard learned Counsel for the parties. By consent, the petition is disposed off at the stage of admissions itself.
3. The impugned orders arise from a suit for damages alleging acts of defamation by the Defendants/ the original Plaintiffs. The Respondent is the original Plaintiff in the suit. The records revealed that the matter was listed before the Court on 13.02.2023 for cross-examination of Plaintiff No.1 who was in the witness box and being examined as Pw1. On the relevant date, as the learned Advocate appearing for the Defendant was held up in another Court, a request was made to keep the matter back for completing cross-examination. However, since the matter was kept back until 4.20pm and the Advocate could not appear, the first

impugned order was passed on 13.02.2023, closing cross examination of the Plaintiff.

4. It is the Petitioner's case, in an application filed on 06.03.2023 for recalling the order dated 13.02.2023 closing cross-examination, that the Advocate for the Defendant appeared in the Court after the order of 13.02.2023 was passed but since the order had already been passed, closing cross- examination, an application was moved on 06.03.2023 stating reasons for recall of the order. This application was opposed by the Plaintiffs on a plea that under the provisions of Order 18 CPC, recall of witness was not possible unless specific reasons were cited in the application under Order 18 Rule 17.

5. The application for recall of the witness was dismissed on 06.05.2023 by the second impugned order on two grounds. The first reason cited was that recall of the witness under Order 18 Rule 17 was possible only for the reasons stated in that provision and could not be adverted to for the reason that the Advocate remained absent for cross

examination. The second reason cited for rejection was that on an earlier occasion, time had been granted to the Defendants for payment of costs of Rs.500/- which has not been deposited. In default, the Defendants did not deserve any indulgence from the Court for recalling its order dated 13.02.2023.

6. The matter did not end there. The Defendant filed yet another application dated 11.07.2023 seeking recall of the order dated 13.02.2023 which was dismissed by the third impugned order of 01.04.2024 on the ground that the application was hit by res judicata since the decision rejecting the application under order dated 06.05.2023 had attained finality and had not been challenged further.

7. Considering the contents of the first application for recall of the order dated 06.03.2023 in substance, this was an application for recall of order dated 13.02.2023 and not really for recall of the witness whose cross-examination had been completed. It may be the consequence of recalling order dated 13.02.2023 which would have the effect of recalling witnesses,

but essentially it was not the case under provisions of Order 18 Rule 17. Learned Advocate for the Petitioner makes a statement that the costs of Rs.500/- awarded to the Plaintiff by an order dated 28.03.2022 which seems to be deposited. The suit is filed on the grounds that the Defendants have committed an act of defamation of the Plaintiff and damage/compensation of Rs.5,00,000/- has been sought. The main witness in that suit would obviously be the Plaintiff himself whose cross-examination was closed. This may result in serious consequences for the Defendants who were themselves not at fault for the closing of the evidence of the Plaintiff on 13.02.2023. This would be a clear case where the Defendants would suffer for the case of remiss of his Advocate appearing late in the matter, notwithstanding that the Advocate being held up in another Court is no reason for adjourning the matter.

8. Considering these facts, it would be just if the impugned order dated 13.02.2023 is quashed and set aside and the Petitioner/ Original Defendant to be permitted to cross-

examine the Plaintiff Pw-1. Consequently, the order dated 06.05.2023 rejecting the application for recall stands quashed and set aside. Since the order dated 01.04.2024 has been passed rejecting his second application for recall of order dated 13.02.2023 on the grounds of res judicata, this order would also stand quashed and set aside considering the grounds on which the application was dismissed.

9. However, the fact remains that the suit is of the year 2016 and the Plaintiff's evidence is pending completion since the year 2018. In this view of the matter, costs would have to be imposed on the Defendants which shall be deposited before the trial court as the condition precedent for proceeding with the cross examination of the Pw1. The Defendant shall deposit Rs.15,000/-(Rupees Fifteen Thousand only) in favour of the Plaintiff with the trial Court on or before 02.07.2025, when the matter is now listed for further evidence of the Plaintiff. The parties have agreed that the Plaintiff would remain present on 02.07.2025 to subject himself to cross examination by the Defendant. The

Defendant shall not seek further adjournment and complete the cross examination of the Plaintiff either on 02.07.2025 or on any other adjourned date which is convenient to the Court.

10. Rule is made absolute in terms of prayer clause (a) of the petition and in terms of the order passed above. No costs.

11. The petition stands disposed of accordingly.

VALMIKI MENEZES, J.