

(2012) 03 BOM CK 0252
In the Bombay High Court
Case No : Writ Petition No. 35 of 2012

Shri Visnum Narayan Prabhu Dessai	Vs	APPELLANT
Smt. Jayashri Visnum Dessai and Shri Ulhas Visnum Dessai		RESPONDENT

Date of Decision : 16-03-2012

Acts Referred:

Citation : (2012) 4 ALLMR 121

Hon'ble Judges : F.M. Reis, J

Bench : Single Bench

Advocate : Shivan Dessai, for the Appellant;

Judgement

F.M. Reis, J.—Heard Shri Shivan Dessai, learned counsel appearing for the petitioner. Rule. Heard forthwith.

2. The respondents were given notice for final disposal of the above petition filed by the petitioner at the stage of admission. Hence, the matter was heard finally at the stage of admission.

3. The above petition challenges the order dated 17.12.2011 passed by the learned Civil Judge Junior Division Quepem, in Regular Civil Suit No. 30/96/B whereby an application for adjournment filed by the petitioner came to be rejected.

4. Shri Shivan Dessai, learned Counsel appearing for the petitioner has pointed out that the petitioner was forced to seek for an adjournment on the relevant day as according to him, an appeal was preferred by the petitioner challenging the order passed by the learned Judge dismissing the application filed by the petitioner under Order 39 Rule 11 of the CPC and as such, according to him, the striking off the defence of the respondents would be relevant for the purpose of considering whether the respondents would be entitled for cross examination. The learned Counsel further pointed out that on such count, the application came to be filed on 17.12.2011, for adjournment so as to enable the petitioner to obtain an appropriate order from the Appellate Court. The learned Counsel has

further taken me through the Roznama in the Civil Suit and pointed out that on 11.11.2011, the application filed by the petitioner for striking off the evidence of the respondents in CMA No. 10/11/B came to be disposed of and thereafter, the matter was fixed for evidence on 16.11.2011. The learned Counsel further pointed out that on 16.11.2011, the petitioner sought for an adjournment and the order was passed directing the petitioner to file their affidavit in evidence on the subsequent date. In accordance with the said direction, the copy of the affidavit was furnished to the respondents on 21.11.2011 and the matter was posted for chief and cross examination of PW1 on 25.11.2011. On the said date, the petitioner sought for an adjournment which came to be granted. Thereafter, on 30.11.2011 arguments were heard with regard to the production of the additional documents filed by the petitioner which came to be allowed. On 2.12.2011, an application was filed for amendment of the plaint by the petitioner and the matter was argued on 09.12.2011 and the order therein came to be passed allowing the application on 12.12.2011 and the suit was posted for submitting a copy of the amended plaint on 14.12.2011. The matter was thereafter fixed for filing additional written statement on 16.12.2011 and the matter was posted for cross of PW1 on 17.12.2011. On the said date, the learned Judge passed the impugned order dismissing the application for adjournment filed by the petitioner. Shri Dessai, learned Counsel appearing for the petitioner has pointed out that the adjournment on the relevant date i.e. on 17.12.2011 was the third adjournment of the petitioner and as such, there was no justification for the learned Judge to refuse the adjournment on the relevant date. The learned Counsel further pointed out that there was genuine difficulty for the petitioner to proceed with the suit on the said date as according to him, as the appeal preferred by the petitioner was coming for hearing before the Appellate Court, there was a wrong assumption on the part of PW1 in not going on with the proceedings on the relevant date. The learned Counsel further pointed out that he will ensure that the evidence of the petitioner would be completed as expeditiously as possible in case an opportunity is given to PW1 to proceed with the evidence in the suit.

5. At the time of issuing notice to the respondents, the petitioner was directed to deposit before this Court a sum of Rs. 5000/- as costs. The learned Counsel has pointed out that the amount has been deposited accordingly.

6. Having heard the learned Counsel and on perusal of the Roznama produced by the learned Counsel appearing for the petitioner, I find that though the petitioner might have been delaying the progress of the suit by filing some applications for amendment and additional documents nevertheless taking note of the dates of the hearings fixed for evidence of PW1 by the learned Judge, Shri Dessai, learned Counsel appearing for the petitioner may be justified to contend that the adjournment on the relevant date i.e. on 17.12.2011 was the third adjournment. Though it is well settled that merely preferring an appeal by itself would not mean that the proceedings before the learned Judge are stayed, in the facts and circumstances of the case, the learned Judge could have given another

opportunity to the petitioner by making it very clear that in case no stay is obtained from the Appellate Court, the proceedings before the learned Judge would proceed. As such, I find it appropriate in the interest of justice that the petitioner should be given another opportunity to proceed with the evidence of PW1 by quashing and setting aside impugned order dated 17.12.2011 refusing an adjournment to the petitioner subject to payment of the costs of Rs. 5000/- to the respondents. It is made clear that the petitioner shall cooperate with the learned Judge to proceed with the suit and shall not unnecessarily seek adjournments on such counts. In view of the above, I pass the following :

ORDER

- (i) The impugned order dated 17.12.2011 passed by the learned Civil Judge Junior Division, Quepem, in Regular Civil Suit no. 30/1996/B at Exhibit D-74 is quashed and set aside.
- (ii) The petitioner is permitted to record the evidence of PW1 on the dates fixed by the learned Judge in accordance with law subject to the respondents receiving the said sum of Rs. 5000/- deposited by the petitioner in this Court.
- (iii) Liberty is given to the respondents to withdraw the said amount of Rs. 5000/- deposited by the petitioner.
- (iv) The petitioner to proceed with the hearing of the suit in accordance with law.
- (v) Rule is disposed of in the above terms with no order as to costs.