
(2013) 02 BOM CK 0178
In the Bombay High Court
Case No : Writ Petition No. 73 of 2013

Union of India

APPELLANT

Vs

Domnic Issac

RESPONDENT

Date of Decision : 08-02-2013

Acts Referred:

Citation : (2013) 5 ALLMR 355 : (2013) 4 BomCR 290 : (2013) 6 MhLj 57

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

Bench : Single Bench

Advocate : Mahesh Amonkar, Central Government Standing, for the Appellant;
Sudesh Usgaonkar, for the Respondent

Final Decision : Disposed Off

Judgement

Reis F.M., J.—Heard Shri M. Amonkar, learned Central Government Standing Counsel appearing for the petitioner and Shri Sudesh Usgaonkar, learned Counsel appearing for the respondent. Rule. Heard forthwith with the consent of the learned Counsel. Learned Counsel appearing for the respondent waives service.

2. The above petition challenges an order dated 15/1/2013 passed by the learned Ad hoc District Judge, North Goa, Panaji in Civil Suit No. 42/2006 whereby the evidence of the petitioner who is the plaintiff to the suit came to be closed. The petitioner seeks for the following relief:

(a) For a writ of certiorari or any other writ, order or direction in the nature of certiorari, calling for the records and proceedings of Civil Suit No. 42/2006 pending before the trial Court i.e. the Ad hoc District Judge-I, (Fast Track), Panaji Goa and after perusing the legality of the impugned order dated 15/1/2013 the same be quashed and set aside and the trial Court be directed to give opportunity to the petitioner to lead its evidence in the suit.

3. The brief facts of the case are that the suit filed by the petitioner for recovery of money was posted for evidence. It is not in dispute that the petitioner sought five adjournments in examining PW 1. It is also not in dispute that the advance

copy of the affidavit in evidence of the concerned witness was already produced before the learned trial Court. Despite of the opportunities given by the learned Judge, when the matter was posted for recording of evidence on 15/1/2013, the concerned witness PW 1 failed to remain present and, as such, the learned Judge closed the evidence of the petitioner/plaintiff.

4. Shri M. Amonkar, learned Central Government Standing Counsel appearing for the petitioner has pointed out that on the relevant date i.e. on 15/1/2013, the concerned witness had to proceed to Delhi on account of the illness of his mother and, as such, on account of such genuine reason PW 1 was not in a position to remain present in the Court. The learned Counsel in support of his said contentions has produced an air ticket dated 16/1/2013 when he returned to Goa from Delhi. The learned Counsel further pointed out that on account of exceptional circumstances PW 1 was not in a position to remain present in the Court and consequently the learned Judge was not justified to pass the impugned order and close the evidence of the witness. The learned Counsel, as such, submits that the impugned order deserves to be quashed and set aside.

5. On the other hand, Shri Sudesh Usgaonkar, learned Counsel appearing for the respondent has supported the impugned order. The learned Counsel pointed out that the petitioner has been unnecessarily delaying the proceedings by filing such successive applications for adjournments on untenable and frivolous grounds and as such the question of granting any indulgence to the petitioner would not arise. The learned Counsel further pointed out that in the application for adjournment filed on the relevant date there were no particulars given by the petitioner as disclosed in the present petition. The learned Counsel further pointed out that the vagueness of the reasons before the learned Judge would itself establish that the learned Judge was justified to pass the impugned order. The learned Counsel has taken me through the records and pointed out that the petitioner has not at all been diligent in pursuing the suit and, as such, the above petition deserves to be rejected.

6. I have carefully considered the submissions of the learned Counsel and have also gone through the records. It is now well settled that for the purpose of getting an adjournment the cause shown on the relevant date would be important. In the present case, what is to be considered is whether on the relevant date i.e. on 15/1/2013 the petitioner had any cause to seek an adjournment. On perusal of the records the contention of the petitioner to the effect that PW 1 had to proceed to Delhi on account of the illness of his mother and return to Goa on 16/1/2013 cannot be disbelieved. In such circumstances, I find that the petitioner had a reasonable ground not to remain present in the Court on the relevant date.

7. Be that as it may, it is well settled that the Court should not normally grant adjournments after three opportunities have been given to the parties. Nevertheless, subsequent adjournments are to be granted in very exceptional circumstances. No doubt, the Court can always resort to granting exemplary

costs to ensure adjournments are not sought on flimsy and untenable grounds. The Apex Court in the judgment reported in Rameshwari Devi and Others Vs. Nirmala Devi and Others, , has inter alia observed that imposition of heavy costs would also control unnecessary adjournments by the parties. In the present case, considering the past conduct of the petitioners in seeking adjournments and lack of diligence on the part of the petitioners in not moving the learned Judge to change the date of hearing earlier, I find, in the peculiar facts of case and for the reasons stated herein above, it appropriate that the impugned order passed by the learned Judge deserves to be quashed and set aside, subject to payment of costs quantified at Rs. 10,000/- to the respondent as condition precedent. In view of the above, I pass the following order:

ORDER

- (i) Rule is made absolute in terms of prayer 17(a) subject to payment of costs of Rs. 10,000/- as condition precedent.
- (ii) The petition stands disposed of.