

(2012) 12 BOM CK 0030

Bombay High Court (Goa Bench)

Case No: Writ Petition No. 718 of 2012

Ignatius Tony Pereira

APPELLANT

Vs

Travel Corporation (India) Pvt.
Ltd. and Mr. Pifran Sanjivan
Fernandes

RESPONDENT

Date of Decision: Dec. 13, 2012

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 6 Rule 18

Citation: (2013) 1 ABR 670 : (2013) 2 ALLMR 552 : (2013) 3 MhLj 406

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

Bench: Single Bench

Advocate: J.J. Mulgaonkar, for the Appellant; Sudesh Usgaonkar, Advocate for Respondent No. 1 and Ms. G. Almeida, Advocate, for the Respondent

Judgement

F.M. Reis, J.

Heard Shri J.J. Mulgaonkar, learned Counsel appearing for the petitioner, Shri Sudesh Usgaonkar, learned Counsel appearing for respondent no. 1 and Ms. G. Almeida, learned Counsel appearing for respondent no. 2. Rule. Heard forthwith with the consent of the learned Counsel. Learned Counsel appearing for the respondents waive service.

2. The above petition challenges orders dated 16/07/2012 and 10/09/2012 passed by the learned Civil Judge, Senior Division, Vasco Da Gama in Special Civil Suit No. 7/2011/A whereby the petitioner has been precluded from carrying out an amendment which was allowed by the learned Judge by order dated 18/06/2012.

3. Shri J.J. Mulgaonkar, learned Counsel appearing for the petitioner has assailed the impugned orders on the ground that the matter was posted on 16/07/2012 on which date the learned Judge noticed that the amendment had not been carried out to the plaint by the petitioner and consequently passed the impugned order closing

the right of the petitioner to carry out such amendment. The learned Counsel further pointed out that thereafter an application came to be filed by the petitioner to recall the said order giving an explanation as to why such amendment could not be carried out and by second impugned order dated 10/09/2012, the learned Judge refused the said relief. The learned Counsel further pointed out that though the learned Judge had called upon the learned advocate appearing for the petitioner on 16/07/2012 to carry out the amendment, nevertheless, considering that the advocate representing on the said date was a junior advocate and was not well conversant with the procedure, such amendment remained to be carried out. The learned Counsel has taken me through the impugned orders as well as the material on record and pointed out that the learned Judge has wrongly exercised jurisdiction by refusing to extend the time to carry out the said amendment to the plaintiff.

4. On the other hand, Shri Sudesh Usgaonkar, learned Counsel appearing for respondent no. 1 has vehemently opposed the above petition and pointed out that the conduct of the Counsel appearing for the petitioner is totally negligent inasmuch as despite of being an opportunity no effort was made by the petitioner to carry out such amendment. The learned Counsel further pointed out that there was no request for any extension of time and consequently there is no jurisdictional error committed by the learned Judge whilst passing the impugned orders. The learned Counsel, as such, submits that the petition be rejected.

5. The learned Counsel appearing for respondent no. 2 has supported to the submissions of the learned Counsel appearing for respondent no. 1.

6. I have considered the submissions of the learned Counsel appearing for the respective parties and have also gone through the records. Considering that procedural law is not to trip litigant of their substantive rights but to advance the cause of justice, I find that the learned Judge was not justified to pass the second order dated 10/09/2012. Though the said application was styled as an application to recall the earlier order the learned Judge could have construed the said application as an application under Order 6 Rule 18 of the CPC for extension of time period and extended the time accordingly. In the facts and circumstances of the case and taking note of the allegations made in the application, I find that the petitioner should be given an opportunity to carry out amendment allowed by order dated 18/06/2012, by extending the time limit. In the facts and circumstances of the case, rule is made absolute in terms of prayer (a). The petitioner to carry out amendment within two weeks from today. Petition stands disposed of. Issue authenticated copy at the request of the learned Counsel appearing for the petitioner.