

CIVIL REVISION APPLICATION NO. 142 OF 2002.

Shri Francisco Alberto Lourenco  
de Cunha, R/of Cuelim,  
Cansaulim, Salcete, Goa.

... Applicant.

Versus

1. Leopoldina Pereira e Mendonca  
(since deceased represented  
by her legal heirs:
  - 1(a). Ive Bernado Pereira  
Mendonca and wife,
  - 1(b). Edith Varla Mendonca
  - 1(c). Maria de Lourdes Vinette  
Pereira Mendonca.
  - 1(d). Ricardo Rollin Pereira  
Mendonca and wife,
  - 1(f). Lina Raimundo Mendonca.
  - 1(g). Blasco Pereira Mendonca
  - 1(h). Maria Eulelia Chantel Pereira  
Mendonca,  
all r/o Utorda, H. No. 74/1,  
P.O. Majorda, Salcete Goa. ... Respondents.

Mr. Valmiki Menezes, Advocate for the Applicant.

Mr. F.M. Reis, Advocate for the Respondents.

Coram: P.V. HARDAS, J.

Date: 26th April 2002.

ORAL ORDER.

By consent of parties, this Civil Revision is  
taken up for final disposal.

2. This Civil Revision Application has been  
filed against the Order of the learned Civil Judge,  
Junior Division, Vasco da Gama, dated 6th April 2002, in  
Regular Civil Suit No. 78/89/C, rejecting the  
application filed by the defendant for adjournment  
(Exhibit 83). The aforesaid application, Exhibit 83,

had been filed by the defendant seeking adjournment on the ground that his witness Shri Menino Colaco, who was under cross-examination, had suddenly taken ill and was shifted to Bombay for treatment. In the application it was further stated that the said witness was available in Goa on 1st April 2002 and had attended to a personal matter in the Court at Vasco da Gama on 3rd April 2002. The application states that suddenly on 4th April 2002 the said witness suffered from severe hypertension and was required to be shifted to Bombay. The said application was objected to by the learned counsel appearing for the plaintiffs on the ground that no original medical certificate had been produced. It was also stated that the said witness was available in the Court at Vasco da Gama on 3rd April 2002 and no certificate from any local doctor had been produced to show that he was advised to be shifted to Bombay immediately. It was also objected on the ground that the defendant had not shown as to how and in what manner the witness was transported to Bombay. It was further contended in the application that when the plaintiffs phoned the said hospital, it was learnt that the said witness was not admitted therein.

3. The learned Court by its Order referred to above rejected the aforesaid application filed by the defendant on the ground that there were general

directions from the High Court to dispose of old matters and, earlier, this case had been adjourned on the ground of ill health of the said witness. Since last chance had been granted to the defendant to produce his witness, the Court declined to grant any further adjournment.

3. I have heard learned counsel Mr. Menezes for the applicant for some time and learned Mr. Reis, appearing for the respondents/plaintiffs. Mr. Reis fairly submitted before me that if the witness is indisposed and is not in a position to come to the Court, the matter will be unnecessary dragged on and the evidence of the witness will not come to an end. According to the learned counsel for the respondents/plaintiffs, it would be in the interest of justice and in the fitness of things if a Commissioner is appointed to record his evidence and in such manner the trial could be disposed off expeditiously. It is true that repeated adjournments have been sought by the defendant on the ground of ill- health of his witness. It is equally true that the original medical certificate was not produced but what was produced was a faxed copy of the medical certificate. It is also true that on 5th April 2002, the aforesaid witness was examined by doctors in the hospital at Bombay. From the material on record, it does not appear that the defendant is putting

forth the excuse of ill-health of his witness as a ruse for seeking repeated adjournment. It is unfortunate that the evidence of this witness could not proceed because of his ill-health. The witness apparently is a material witness for the defendant and in the fitness of things, it is required that the defendant be allowed to examine the witness by giving last chance to the defendant. Liberty is therefore given to the defendant to apply to the learned trial Court for appointment of a Commissioner to record the evidence of the said witness. The trial Court shall consider and decide the said application, if filed by defendant, according to law.

4. The impugned Order dated 6th April 2002 closing the evidence of Shri Menino Colaco is, therefore, quashed and set aside. Liberty is given to the applicant/defendant to apply to the learned trial Court for examination of Shri Menino Colaco on commission. If such an application is made, the learned trial Court shall examine and decide the aforesaid application on merits and thereafter the trial to proceed as per law. In the event no such application is made, the learned trial Court shall grant last opportunity to the defendant to examine Shri Menino Colaco and, accordingly, fix the date as per the convenience of the parties.

5. In the result Civil Revision Application is,  
accordingly, allowed with the aforesaid directions.

P.V. HARDAS, J.

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