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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 538 OF 2026

Shri Imtiyaz Shaikh Z Chorlekar, Son of Chandol Shaikh, 55 years of age, married, business, Indian National, r/o. H. No. 104/52, Shamshad Manzil, Makhdoom Ashraf Nagar, Consua, Cortalim, Goa. ... Petitioner

Versus

Shri Salman Shaikh, Son of Mr.Babu Shaikh, Age 32 years, Civil Engineer, Having office at Shop No. 31, 1st Floor, Karma Point, Vasco Da Gama, Goa. ...Respondent

Mr. Dinesh Naik, Advocate *for Petitioner.*

Mr. V. Braganza, Advocate *with Mr. Sagar Rivankar, Advocate for Respondent.*

CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 14th OCTOBER 2026
PRONOUNCED ON : 21st OCTOBER 2026

ORDER

1. Petitioner impugns Order dated 04.05.2026 passed by Civil Judge, Senior Division 'A' Court, at Vasco da Gama, in Special Civil Suit No. 10/2021/A, thereby rejecting Petitioner's application filed at Exhibit 46 for issuance of witness summons to Principal of Jain College of Engineering and Assistant Commissioner of CGST.

2. The Petitioner and Respondent entered into a contract of construction of residential bungalow of Respondent-Plaintiff. In

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pursuance to contract, Respondent-Plaintiff completed construction work and raised various bills and tax invoices for works executed and some additional works. According to Petitioner, Respondent failed to realise the bills, hence he instituted Special Civil Suit No. 10/2021/A before Civil Court at Vasco da Gama, for recovery of amount of Rs.20,38,673.47 with interest @ 18% per annum. The Respondent contested Petitioner's claim by filing written statement and denied the claim in toto. It is contended that no contract was executed between the parties and bills placed on record are forged.

3. The Respondent-Plaintiff concluded his evidence. The Petitioner-Defendant filed application under Order XVI Rule 1(2) and (3) of Civil Procedure Code (CPC), seeking issuance of summons to Principal of Jain College of Engineering and Assistant Commissioner of CGST, contending that Respondent-Plaintiff was student at relevant time and GST number mentioned on the bills relied by him are non-existent. Trial Court declined to entertain Petitioner's application on the ground that Petitioner failed to file list of witnesses at appropriate stage and conduct of Petitioner shows that he wants to protract the proceedings by various modes.

4. Mr. Dinesh Naik, learned Counsel appearing for Petitioner, submits that mere failure on part of a party to file list of witnesses does

not, by itself, preclude such party from summoning witnesses. He would submit that permission to summon such witnesses can be granted under sub-rule (3) of Rule 1 of Order XVI of CPC. Petitioner's right to seek permission of Court under sub-rule (3) of Rule 1, to call/summon any witness, cannot be taken up. He would submit that sub-rule (3) of Rule 1 of Order XVI confers a wider jurisdiction on the Court to cater a situation where party has failed to name witness in list and yet the party is unable to produce him or her on his own under Rule 1A.

In support of his contention, he relies upon observations of this Court in cases of **Rajendra Mohanlal Rathi vs. Ramsingh Punjabi & anr.**[1] and **Dinesh Singh Bhim Singh vs. Vinod Shobhraj Gajaria & anr.**[2], the observations of Rajasthan High Court in case of **LIC of India & Ors. vs. Ram Prakash**[3], and observations of Karnataka High Court in case of **Rehman Hussain vs. Althaf Hussain & anr.**[4]

5. *Per contra*, Mr. Braganza, learned Advocate appearing for Respondent, supports impugned Order contending that neither Petitioner submitted the list of witnesses nor he could supply reasons

1 2012 (1) All MR 127
2 AIR OnLine 2023 BOM 74
3 2003 (3) LJR 404
4 AIR 2004 KARNATAKA 172

as to why the application was not filed within time prescribed under Rule 1 of Order XVI. He would submit that Petitioner may produce any witness without assistance of the Court and cannot insist the Court to issue witness summons.

In support of his contention, he relies upon observations of Supreme Court in cases of **Jai Singh & Ors. vs. Municipal Corporation of Delhi & anr.**[5], **Srinivas Raghavendrarao Desai (Dead) by Lrs vs. Kumar Vamanrao alias Alok & Ors.**[6], **Vinod Kumar Sangal vs. Union of India & anr.**[7] and **Lalitha J. Rai vs. Aithappa Rai**[8]

6. Having considered submissions advanced by learned Advocates appearing for respective parties and upon perusal of records tendered into service, it is apparent that the Suit for recovery of money has been instituted against the Petitioner. Petitioner by filing written statement, denied the claim of Plaintiff. He has specifically denied that he had engaged the Respondent-Plaintiff's services for construction of bungalow. He denied receipt of any bill from Respondent. He has specifically denied execution of additional work and payment of GST on the bills. Looking to the specific defence incorporated, Petitioner made

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5 (2010) 9 SCC 385
6 2024 SCC OnLine SC 226
7 (1995) 4 SCC 246
8 (1995) 4 SCC 244

an application for issuance of witness summons to Assistant Commissioner of CGST so as to bring on record particulars regards to the GST registration of Respondent-Plaintiff and validity of invoices issued under particular GST number. This Court finds that Petitioner has given sufficient reasons for issuance of witness summons for examination of witness that would assist the Court to reach to a just and fair conclusion. However, the Petitioner's prayer to issue witness summons to Principal of Jain College of Engineering, cannot be approved as the said witness would not be relevant to decide the controversy between parties. The Trial Court refused to accede with Petitioner's prayer for technical reason referring to language of Rule 1 of Order XVI. However, it is now well settled that legislature did not put total prohibition on production of witnesses. Nonetheless, when they seek assistance of Court, they are enjoined to give reasons as to why they have not filed application as prescribed under Rule 1 of Order XVI.

7. In present case, the Petitioner has stated that he made application under Right to Information to get necessary information from Assistant Commissioner of CGST and, on failure of his attempt to secure such information, the necessity arose to call the witness from the office. This Court finds that aforesaid reasons were sufficient compliance of requirement under sub-rules (2) and (3) of Rule 1 of

Order XVI. Pertinently, this Court in case of **Dinesh Singh Bhim Singh vs. Vinod Shobhraj Gajaria** (supra), observed that technical failure to plead sufficient cause as required under Order XVI Rule 1(3) alone cannot be a reason to deny plaintiff an opportunity to examine additional witnesses, particularly when examination of said witnesses appears to be necessary for purpose of determining real question of controversy between parties.

8. In wake of aforesaid stipulation of law, the impugned Order to extent it refuses issuance of witness summons to Assistant Commissioner of CGST, cannot be sustained in law. Hence, Writ Petition is partly allowed. Impugned Order dated 04.05.2026 passed at Exhibit 46 in Special Civil Suit No. 10/2021/A before Civil Judge Senior Division 'A' Court at Vasco da Gama, is quashed and set aside to the extent it declines to issue witness summons to Assistant Commissioner of CGST. The application at Exhibit 46 shall be deemed to be allowed to that extent. The rest of impugned Order is maintained as it is.

9. Writ Petition is disposed of.

S. G. CHAPALGAONKAR, J.

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