

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 653 OF 2015**

M/s Sociedade de Fomento
Industrial Limited,
A Company registered under
the Company's Act, 1956,
having its registered office at
Vila Flores Da Silva,
Erasmoo Carvalho Street,
Margao-Goa 403 601.

Through its duly constituted
Attorney, Mr. Radhakrishna S. Ghodge.

... Petitioner

Versus

1. Smt. Sita Shripad Narvekar,
aged 70 years, residing at plot no. 5,
Friends Colony, Khadapabandh,
Ponda-Goa.
2. Shri Sagar Shripad Narvekar,
aged 50 years, residing at plot no. 5,
Friends Colony, Khadapabandh,
Ponda-Goa.
3. Ms. Aishwarya Sagar Narvekar,
aged 19 years, residing at plot no. 5,
Friends Colony, Khadapabandh,
Ponda-Goa.
4. Ms. Ishwari Sagar Narvekar,
aged 13 years, residing at plot no. 5,
Friends Colony, Khadapabandh,
Ponda-Goa.
(represented herein by her next friend
Shri Sagar Shripad Narvekar,
the respondent no. 2 above)

5. Shri Surajkumar Murlidhar Narvekar,
aged 38 years, residing at
House No. 204, Main Road, Azra,
District Kolhapur-Maharashtra.
6. Smt. Anuradha Murlidhar Narvekar,
aged 65 years, residing at
House No. 204, Main Road, Azra,
District Kolhapur-Maharashtra.
7. Sou. Pooja Padmesh Shetye,
aged 44 years, residing at plot no. 49,
Samrat Nagar, Kashid Colony,
Kolhapur-Maharashtra.
8. Sou. Sangeeta Niteen Berde,
aged 42 years, residing at plot no. 72,
Sane Guruji Vasahat,
Kolhapur-Maharashtra.
9. Sou. Yogita Dinraj Gevenkar,
aged 40 years, residing at plot no. 175,
A/2, 'Ratnraj', MES College Road,
Zuari Nagar, Sancoale, 403726.
10. Shri Motiram Narayan Narvekar,
aged 60 years, residing at House No. 293,
Agarkar Road, Tilakwadi-Belgaum.
11. Shri Shivram Vishwanath Narvekar,
aged 54 years, residing at House No. 83,
Bombay Sadan, Opposite Fatima Convent,
Margao-Goa.
12. Shri Mahadev Vishwanath Narvekar,
aged 52 years, residing at House No. 83,
Bombay Sadan, Opposite Fatima Convent,
Margao-Goa.

13. Shri Sitaram Vishwanath Narvekar,
aged 50 years, residing at House No. 83,
Bombay Sadan, Opposite Fatima Convent,
Margao-Goa.

14. Shri Atmaram alias Kishore
Venktesh Nevagi, (since deceased
through his legal representatives):

14(a) Dr. Urmila Atmaram Nevagi,
wife of Atmaram alias Kishore
V. Nevagi, major of age;

14(b) Dr. Venkatesh Atmaram Nevagi,
son of Atmaram alias Kishore
V. Nevagi, major of age;

14(c) Dr. Sakhi Venkatesh Nevagi,
wife of Dr. Venkatesh Nevagi,
major of age;

All the above residents of "Padma",
House No. 3129, Near Children's Park,
Gogol, Fatorda, Margao, Goa-403 602.

14(d) Mrs. Diksha Dattaraj Karmalkar
alias Renuka Atmaram Nevagi,
daughter of Atmaram alias Kishore
V. Nevagi, major of age;

14(e) Mr. Dattaraj Dasharath Karmalkar,
husband of Diksha Karmalkar,
major of age;

Both residents of 2nd Floor, Venkatesh,
Annapurna Sankul, Aquem,
Margao, Goa-403 501.

... Respondents

Mr. Shailendra Gurudas Bhole, Advocate for the Petitioner.

Mr. Yogesh Nadkarni with Ms. A. Kale, Advocates for the Respondents.

CORAM:- C. V. BHADANG, J.

DATE:- 19th OCTOBER, 2015.

ORAL JUDGMENT:

Rule. Rule made returnable forthwith. Mr. Nadkarni, learned Counsel waives service on behalf of the respondents. Heard finally with the consent of the parties.

2. By this petition, the petitioner who is the original defendant is challenging the order dated 30.06.2015 passed by the learned Ad-hoc Senior Civil Judge, Margao in Special Civil Suit No. 58/2013/III. By the impugned order, the application filed by the petitioner for exhibiting certain documents has been dismissed.

3. The brief facts are that the petitioner served a notice to admit the documents, on the respondents under Order 12 Rule 3 of the C.P.C. The notice was served on or about 18.11.2014. The documents which the petitioner wanted the respondents to admit

are some letters by the petitioner to the respondents which are in excess of a thousand communications. It is further undisputed that the respondents did not specifically deny the said documents. In that view of the matter, an application came to be filed on behalf of the petitioner on 15.01.2015, placing reliance on Order 12 Rule 2A of the C.P.C. It was contended that in terms of the provisions of Order 12 Rule 2A of the C.P.C., as the documents were not specifically denied, they stand admitted. The petitioner prayed that the documents be exhibited.

4. The learned trial Court by the impugned order has dismissed the application on the ground that the failure on the part of the respondents, to specifically deny the documents does not mean that the contents of the documents are admitted.

5. It is submitted by Mr. Bhobe, the learned Counsel for the petitioner that the view taken by the trial Court is contrary to the provisions of Order 12 Rule 2A of C.P.C. It is submitted that the said Rule envisages that the documents shall be treated to be admitted in case, the adversary fails to specifically deny the

documents.

The learned Counsel has placed reliance on the decision of this Court, in the case of **Geeta Marine Services Pvt. Ltd. and Another Vs. State and Another**, reported in 2009 ALL MR (Cri) 672.

6. On the contrary, it is submitted by Mr. Nadkarni, the learned Counsel for the respondents that the time to exhibit the documents has not yet arrived. The learned Counsel fairly submitted that there was no response to the notice to admit the documents and in that view of the matter, in the absence of specific denial, the provisions of Order 12 Rule 2A of C.P.C. would come into play. In short, the submission is that the documents can only be exhibited when the petitioner enters into the witness box and tenders his evidence.

The learned Counsel for the respondents in this regard has placed reliance on the provisions of Order 13 Rules 4 and 7, Order 18 Rule 4 of the C.P.C. as also, the form of notice to admit documents as provided in Form No. 9 of Appendix C to the C.P.C. Reliance is also placed on paras 522, 523 and 524 of the Civil

Manual. The learned Counsel has placed reliance on the decisions of this Court in the case of **Rekha Ramrao Bhujang Vs. Subhadrabai Keshavrao Bunage and Others**, reported in **2012(3) Bom.C.R. 156** and in the case of **Sunil Tukaram Bharadkar Vs. Santosh Gopichand Rane**, reported in **2006(5) Bom.C.R. 237**.

7. I have considered the rival circumstances and the submissions made. One of the objects of Order 12 Rule 2A of C.P.C. is to curtail the time taken for recording of evidence and exhibiting the documents and thereby expediting the trial. Order 12 Rule 2A of C.P.C. in turn provides that every document which a party is called upon to admit, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of that party or in his reply to the notice to admit documents, shall be deemed to be admitted except as against a person under a disability. The proviso to Order 12 Rule 2A(1) of C.P.C. states that the Court in its discretion and for reasons to be recorded require any document so admitted to be proved, otherwise than by such admission.

It can thus be seen that once, in pursuance of a notice to admit the documents, the party concerned does not deny the documents specifically or by necessary implication, the same shall be deemed to be admitted. In fact, there was no dispute denying the arguments at the Bar that the documents will have to be treated to be admitted in evidence. The only question is about marking of exhibits. Normally, mere marking of documents as exhibits does not amount to proof and it is always open to the Court to decide the same in accordance with law. The format of notice as provided in Form No. 9 of Appendix C in the C.P.C. would also show that the admission as envisaged under Order 12 Rule 3 of C.P.C. is subject to all just exceptions to the admissibility of such documents as evidence in such suits. Both the cases cited on behalf of the respondents arose out of a situation where the parties had led oral evidence. In other words, in none of the cases cited above, there was a notice to admit documents given. Be that as it may, having regard to the provisions of Order 12 Rule 2A of C.P.C. and the fact that the documents are not specifically denied, the documents will have to be treated as admitted, subject to all just exceptions as to the admissibility of the documents as

evidence. Thus, the petition will have to succeed. Accordingly, the impugned order is hereby set aside. The application filed by the petitioner is allowed. The documents produced alongwith notice to admit the documents shall be treated to be admitted, subject to all just exceptions to their admissibility as evidence.

8. Rule is made absolute in the aforesaid terms, with no order as to costs.

C. V. BHADANG, J.

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