

**IN THE HIGH COURT OF BOMBAY AT GOA**

**WRIT PETITION NO. 87 OF 2016**

Shri Cajetan D'Souza alias,  
Caetano D'Souza,  
Major of age, Indian National,  
R/o. H. No. 54, Quitula,  
Aldona, Bardez, Goa.

..... Petitioner

V e r s u s

Shri Lamartine de Roche,  
Major of age, retired, Indian National,  
R/o. H. No.48, Quitula,  
Aldona, Bardez,Goa.

..... Respondent

Mr. J. A. Lobo, Advocate for the Petitioner.

Mr. A. D. Bhobe, Advocate for the Respondent.

**Coram:- S. B. SHUKRE, J.**  
**Date:- 15th February, 2016.**

**Oral Judgment:**

Heard. Rule. Rule made returnable forthwith. Heard finally  
by consent.

2. The question involved in this petition is as to whether the petitioner, the original defendant could have been allowed to produce a new document, the valuation report dated 30/9/2015 issued by Civil

Engineer, Mr. Llyod Macedo at a stage when the evidence of the plaintiff/respondent as his first witness was over or not.

3. According to learned counsel for the petitioner/defendant, provision of Order 7 Rule 14(3) C.P.C although grants power to the Court to permit production of documents, the permission is not to be granted on the mere asking of the plaintiff and the Court must consider that there is sufficient cause demonstrated by the petitioner in not producing the document at the earlier stage. He relied upon following judgments:

(i) **Asia Pasific Brewerise Vs. Superior Industries** reported in LAWS (DLH)-2009-3-53.

(ii) **Boramma Vs. Boraiah**, reported in AIR KARR-2014-3-671.

4. Shri Bhobe, learned counsel for the respondent/plaintiff submits that after the 2002 amendment, the rigor of Rule 14(3) to Order 7 has been toned down and what was earlier required is not required in the newly amended rule. He submits that previously it was necessary for the plaintiff to show sufficient cause but now this requirement has been done away with in Rule 2 of Order 13 of C.P.C.

5. Having considered the provisions of Order 13 Rule 2 and Order 7, Rule 14 (3), I am of the view that since the document in question has been seen by the learned Senior Civil Judge, as necessary for determining the real controversy involved in the suit and rightly so, no fault could be found with the impugned order to the extent it allows production of the valuation report dated 30/9/2015. Once, it is found that on principles the impugned order cannot be interfered with, what remains is only the issue of inconvenience being caused to the petitioner/defendant. Inconvenience which may be caused to the petitioner could be on account of the fact that some of the effort of the petitioner in cross-examining the witness of the respondent has gone waste and also because of observation of the learned Senior Civil Judge that the valuation report dated 30/9/2015 states the same valuation as the previous valuation report which is likely to pose some difficulty to the petitioner in effectively cross-examining plaintiff's witness. The observation of the learned Senior Civil Judge that the report dated 30/9/2015 states the same valuation as the earlier is not correct as the amount valued in this report some what differs from the amount mentioned in the report of Mr. Auxilio Rodrigues. No doubt, the

approach of a Civil Court in allowing production of a documents at a later stage has to be liberal but the Court also has to see that injustice is not caused to other side. If, because of some acts of one side, inconvenience has been caused to the other side, the Court should also be appropriately responding to it. Since, this aspect of the case has been ignored by the trial Court, I am inclined to partly allow this writ petition only to the extent of granting of costs and removing of the observation of the trial Court from the impugned order to the effect that the valuation report dated 30/9/2015 states the same valuation.

6. Accordingly, writ petition is partly allowed. The order dated 21/12/2015 is confirmed subject to payment of costs of Rs.1000/- (Rupees one thousand only) by the respondent to the petitioner within two weeks from the date of the order and also a direction that the observation of the trial Court appearing in para 8 starting from the line “... It is also seen that the report now sought to be produced on record of Mr. Llyod Macedo which is obtained on 30/9/2015 also states the same valuation.”, shall stand removed from the impugned order forthwith. The petitioner shall have the liberty to cross examine the respondent on the new valuation report in accordance with law.

7. It is also made clear that the amount stated in the valuation report of Mr. Auxilio Rodrigues and in the valuation report of Mr. Llyod Macedo are different and shall be appreciated by the Trial Court accordingly in accordance with law.

8. Rule is made absolute in these terms.

S. B. SHUKRE, J.

Ap/-