

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.280 OF 2016

Rama Mukund Naik,
Age about 95 years,
Resident of Travelim,
Shiroda Goa.

.... Petitioner

V e r s u s

Ms. Ermelina Rodrigues,
major of age,
r/o B.S.I. Second floor,
Dr. Almeida Complex,
Ponda Goa.

..... Respondent.

Shri A. Nachinolkar, Advocate for the Petitioner.

Respondent in person.

CORAM: C. V. BHADANG, J.
DATE: 21ST OCTOBER, 2016.

ORAL JUDGMENT:

Rule made returnable forthwith. Heard finally by consent.

2. Although the parties have argued the matter at some length, this petition can be disposed of on a short

count. The present respondent (the respondent no.1 (c) before the learned District Judge) in Regular Civil Appeal No.52/2014 had filed an application Exhibit 23 and Exhibit 28. Application Exhibit 23 was filed for production of photographs and copies of evidence led before the Mamlatdar under Order 41 Rule 27 of C.P.C., while Application Exhibit 28 was filed for deciding application Exhibit 23 before deciding the appeal.

3. The learned District Judge by an order dated 27/1/2016 allowed application Exhibit 28 and on the same date has partly allowed the application Exhibit 23 permitting the production of the copy of the evidence. These orders are subject matter of challenge in this petition at the instance of the petitioner (appellant before the learned District Judge).

4. I have heard Shri Nachinolkar the learned counsel for the petitioner and the respondent in person and have also considered the written submissions filed by the respondent which are taken on record.

5. The Hon'ble Apex Court in the case of **Union of India Vs. Ibrahim Uddin and another** (2012) 8 SCC 148 in para 52 has inter alia held that the application under Order 41 Rule 27 of C.P.C has to be considered at the stage of final hearing of the appeal. The learned District Judge has although noticed the said legal position has simply observed that 'under the facts and circumstances of the given case', it is necessary to decide such an application before deciding the appeal. It is not possible to discern as to what are the facts and circumstances which necessitated the taking up of the application Exhibit 23 prior to the stage of deciding the appeal. Thus the said order cannot be sustained in view of the decision of the Hon'ble Supreme Court in the case of **Ibrahim Uddin (supra)**. In such circumstances the order below Exhibit 23 will also have to be set aside. In the result the following order is passed:

Order:

The petition is partly allowed. The learned District Judge shall consider application Exhibit 23 at the final hearing of the appeal in consonance with the decision of the Hon'ble

Supreme Court in the case of **Ibrahim Uddin (supra)**. The rival contentions of the parties are left open. Rule is made absolute in the above terms with no order as to costs.

C. V. BHADANG, J.

AP/-