

IN THE HIGH COURT OF BOMBAY AT GOA PANAJI

WRIT PETITION NO. 302 OF 2016

Mrs. Veronica Noronha,
63 years of age,
Resident of 12-A/1,
Muxir Waddo,
Colvale, Bardez-Goa.

..... Petitioner

V e r s u s

Mr. Xavier Gomes,
Major of age,
Resident of H. No.41/1,
Damedem, Thivim-Goa.

.... Respondent

Shri A. D. Bhobe, Advocate for the Petitioners.

Shri G. Agni, Advocate for the Respondent.

CORAM: C. V. BHADANG, J.
DATE: 27th April, 2016.

ORAL JUDGMENT:

Rule. Rule made returnable forthwith. The learned counsel for the respondent waives service. Heard finally by consent of the parties.

2. By this petition, the petitioner is challenging three orders all dated 20/4/2015 by which the learned District Judge has allowed three applications filed by the respondent/appellant under Order 41 Rule 27 of C.P.C. for production of documents at the appellate stage. The petitioner is the respondent in the appeal.

3. On behalf of the petitioner, reliance is placed on the decision of the Hon'ble Supreme Court in the case of "**State of Rajasthan Vs. T. N. Sahani and others**" reported in (2001) 10 SCC 619 and in the case of "**Union of India Vs. Ibrahim Uddin**", reported in (2012) 8 SCC 148, in order to submit that an application under Order 41 Rule 27 of C.P.C. was required to be considered at the stage of hearing of the appeal. He, therefore, submits that the applications could not have been considered and allowed before the appeal was taken up for hearing.

4. Learned counsel for the respondent states that this Court may pass appropriate order, as may be deemed fit.

5. Having regard to the circumstances and the submissions made and in view of the law laid down by the Hon'ble Supreme Court in the aforesaid cases, the appellate Court will have to consider the application under Order 41 Rule 27 of C.P.C. when the appeal is taken up for hearing. In that view of the matter the impugned orders are hereby set aside. The learned District Judge shall consider the applications (Exhibits 14-D,15-D and 17-D) when the appeal is taken for hearing. It is made clear that this Court has not expressed any opinion on merits of the applications. Rule is made absolute in the aforesaid terms with no order as to costs.

C. V. BHADANG, J.

Ap/-