

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 392 OF 2016**

Shri Rajaram Giri Naik, son of
Giri Naik, 55 years old,
businessman, residing at C/o
Shubham Textiles, 2nd Floor, Dr.
Gokhle's Building, Upper Bazar,
Ponda, Goa.

... Petitioner

Versus

1. State of Goa, through the
Secretary, Department of
Mines, with its office at the
Secretariat, Porvorim,
Bardez, Goa.
2. The Director of Mines and
Geology, Government of Goa,
Udyog Bhavan, Panaji, Goa.
3. Chowgule & Company Pvt.
Limited, a Company registered
under the Indian Companies
Act, 1956, represented by
Power of Attorney Shri R.P.P.
Alvenkar, with its registered
office at "Chowgule house"
Mormugao Harbour, Goa 403
803.

... Respondents

Mr. Vilas P. Thali, Advocate for the Petitioner.

Ms. P. Kalangutkar, Additional Government Advocate
for Respondent Nos. 1 and 2.

Mr. Prasheen Lotlikar, Advocate for Respondent No. 3.

CORAM:- C. V. BHADANG, J.

DATE:- 20th JUNE, 2016

ORAL JUDGMENT:

Rule. Rule made returnable forthwith. The learned Additional Government Advocate for respondent nos. 1 and 2 and the learned Counsel for respondent no. 3, waive service. Heard finally, by consent of the parties.

2. The petitioner, who is the defendant in Civil Suit No. 3/2008 is challenging the order dated 16.01.2016, passed by the learned District Judge, Panaji, whereby the objection raised by the petitioner, to the production of a compact disc (CD) on record (which is at Exhibit-12 in the contempt proceedings), during the evidence of PW-1, Ramchandra Alvenkar, has been rejected. The contention on behalf of the petitioner is that the said CD being the secondary evidence of electronic

record, it is necessary to enclose a certificate as required under Section 65-B(4) of the Evidence Act, 1872 (the Evidence Act, for short), before it can be produced and proved in evidence.

3. The learned Counsel for the petitioner has placed reliance on the decision of the Hon'ble Apex Court, in the case of **Anvar P.V. Vs. P.K. Basheer and Others**, reported in **(2014) 10 SCC 473**, in order to submit that in the absence of the said certificate, the CD could not have been taken on record or exhibited. The learned Counsel has further pointed out that the trial Court has observed that the said document is already on record in the contempt petition (at Exhibit-12). He points out that even in the contempt petition, an objection was raised for the production of the CD on account of non-compliance with Section 65-B(4) of the Evidence Act.

4. The learned Counsel for the respondent no. 3, who is the contesting respondent states that without prejudice to any of his contentions, the respondent no. 3 would produce a certificate as required under Section 65-B(4) of the Evidence Act.

5. The learned Additional Government Advocate has nothing to add as essentially, respondent no. 3 is the contesting party.

6. I have considered the circumstances and the submissions made.

7. The Hon'ble Apex Court in the case of **Anvar P.V.** (supra) has held that where the party is seeking production of secondary evidence of electronic record, the production of a certificate as required under Section 65-B(4) of the Evidence Act, is essential. The learned trial Court has observed that, the learned Counsel for the

petitioner (Defendant no. 3) relied upon the judgment of the Hon'ble Apex Court, "which is not before me". Once a party cites a judgment and places reliance on the same, it cannot be brushed aside by saying that the said judgment is not before the Court. Secondly, even so far as the document in the contempt petition (Exhibit-12) is concerned, there again a similar objection has been raised on behalf of the petitioner.

8. In such circumstances, I find it appropriate that the trial Court reconsiders the objection in the light of the provisions of Section 65-B(4) of the Evidence Act and the decision of the Hon'ble Apex Court in the case of **Anvar P.V.** (supra). In the event, the respondent no. 3 produces a certificate as required under said provisions, it would be open to the learned trial Court to consider the effect of the same and pass appropriate orders.

9. In that view of the matter, the impugned order is set aside. The learned trial Court shall reconsider the objection raised on behalf of the petitioner in the light of Section 65-B(4) of the Evidence Act and the decision of the Hon'ble Apex Court in the case of **Anvar P.V.** (supra).

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

C.V. BHADANG, J.

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