

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 451 OF 2016

M/S. VISHWAS WAREHOUSING AND
TRADING PVT. LTD., THR. THEIR
DIRECTOR, SHRI. SUVARN RAJARAM
BANDEKAR.

... Petitioner

Versus

MS. VIRGINIA MARIA SIMOES ALIAS
NAZIA NIZAR AND 7 ORS.,

... Respondents

Mr. Shivan Desai, Advocate for the Petitioner.

Coram:- C. V. BHADANG, J.

Date:- 25th April, 2016

P.C.

Heard Shri Shivan Desai, learned Counsel for the Petitioner.

2. The Petitioner, who is the original Plaintiff, is challenging the Order dated 07.04.2016 on an application at exhibit D-112 passed by the learned Senior Civil Judge at Quepem in Special Civil Suit No. 32/2007/A. By the said Order, application exhibit D-112 seeking return of the affidavit in lieu of chief examination of the Petitioner is sought to be withdrawn.

3. The learned Trial Court has relied upon the decision of this Court in the case of BANGANGA CO-OPERATIVE HOUSING SOCIETY LIMITED VS. VASANTI GAJANAN NERURKAR reported in 2015 (5) Bom C R 813 and the decision of the Hon'ble

Supreme Court in the case of RASIKLAL MANIKCHAND DHARIWAL & ANR. VS. M/S. FOOD PRODUCTS reported in 2012 (2)SCC 196, to hold that affidavit in evidence once filed cannot be allowed to be withdrawn.

4. The only contention raised on behalf of the Petitioner is that this Order may not come in the way of the Petitioner in examining the authorised signatory Mr. Vasudeo Raikar, as the principal witness on behalf of the Petitioner. It is also submitted that the contents of the affidavit in lieu of the chief examination of the Petitioner shall not form the part of the substantive evidence before the Trial Court.

5. I have considered the circumstances and the submissions made. It is needless to mention that the affidavit in lieu of the chief examination once filed before the Court would be part of the record of the suit and cannot be allowed to be withdrawn. However, it is evident that this may not preclude the Petitioner from examining any other witness in support of his case before the Trial Court. As a normal rule, nothing is evidence unless it is tested on the basis of cross examination. This may be subject to certain exceptions when the affidavit may contain some admissions. However, this need not be gone into at this stage as, the principal issue at this stage is, whether the Petitioner can be allowed to withdraw the affidavit in lieu of chief examination.

6. It is made clear that merely because the prayer in this regard has been rejected by the Trial Court, it may not come in the way of the Petitioner in examining any other witness as stated earlier. The legal effect of any such evidence including the affidavit of the Petitioner will have to be considered at the final disposal of the trial. All contentions of the parties in this regard are left open.

7. With this, no case for any interference is made out. Writ Petition is accordingly disposed of.

8. Authenticated copy of this Order be issued to the parties in accordance with law.

C. V. BHADANG, J.

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