

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 720 OF 2016**

SHRI. KRISHNA PURUSHOTTAM
PRABHU DESAI

... Petitioner

Versus

MRS. ADELINE OLIVIA LOBO
@ ADELINE LOBO PEREIRA
AND 6 ORS.

... Respondents

Shri Sudesh Manohar Usgaonkar, Advocate for the
Petitioner.

Shri B.P. Sardessai, Advocate for Respondents
No.5 & 6.

Coram:- C. V. BHADANG, J.

Date:- 17th October, 2016

ORAL ORDER :

Heard learned Counsel for the parties.

2. The petitioner/plaintiff is challenging the order dated 9/03/2015 and 17/06/2016 passed by the learned Additional Civil Judge Senior Division, Margao in Special Civil Suit No.276/2011/II, by which the learned Trial Court has refused to admit documents annexures A to H (collectively marked as 'X') in evidence and to exhibit them.

3. The petitioner produced documents annexures A to H during his examination-in-chief on 9/03/2015. The learned Trial Court has noticed that the witness not being the author of these documents, the notarised copies so produced were marked 'X' subject to proof. At this point of time, the petitioner did not insist for the document being marked as exhibits. Subsequently, the petitioner filed an application Exhibit 77/D to admit the documents in evidence and mark them as exhibits. This application has been rejected by order dated 17/06/2016 on the ground that the process of ascertaining the truth by adducing evidence is still in progress. The learned Trial Court has further held that the cross-examination, defence evidence and the expert opinion, if any, will bring home the truth and it is only thereafter that the question of admitting the documents would arise. Thus, in the opinion of the Trial Court the application is premature.

4. It is contended on behalf of the petitioner that the documents should have been marked as exhibits. The learned Counsel, however, does not dispute that mere marking of document as exhibit does not amount to proof of the document in accordance with law. Reliance is placed on the Full Bench decision of this Court in the case of **Mr. Hemendra Rasiklal Ghia V/s. Subodh Mody, 2008 (6) ALL MR 352** and the decision of the Delhi High Court in the case of **Sudir Engineering Company V/s. Nitco Roadways Ltd., 1995 RLR 286**. It is submitted that out of inadvertence the petitioner did not insist for the documents being marked as exhibit on 9/03/2015. It is however, submitted that this will not preclude the petitioner from claiming that the documents be marked as exhibits.

5. The learned Counsel for the respondent nos.5 & 6 who are the contesting respondents has supported the impugned order. It is submitted that the Trial Court has not foreclosed the

issue and has dismissed the application being premature. It is submitted that the petitioner ought to have insisted, if at all, to mark the documents as exhibits on 9/03/2015 which is not done.

6. I have carefully considered the rival circumstances and the submissions made. In the Full Bench decision in **Mr. Hemendra Rasiklal Ghia** (supra) in para 92 of the judgment it is held thus:

92. In view of the above analysis of the statutory provisions and our discussion, we, accordingly, articulate our conclusions as follows:

Answer to Question-A :

As already noticed, (i) objection to the document sought to be produced relating to the deficiency of stamp duty must be taken when the document is tendered in evidence and such objection must be judicially determined before it is marked as exhibit;

(ii) Objection relating to the proof of document of which admissibility is not in dispute must be taken and judicially determined when it is marked as exhibit;

(iii) Objection to the document which in itself is inadmissible in evidence can be admitted at any stage of the suit

reserving decision on question until final judgment in the case.

The Court trying the suit or proceedings as far as possible is expected to decide the admissibility or proof of document as indicated hereinabove. As we have already added a word of caution that while exercising discretion judiciously for the advancement of the cause of justice for the reasons to be recorded, the Court can always work out its own modality depending upon the peculiar facts of each case without causing prejudice to the rights of the parties to meet the ends of justice and not to give the handle to either of the parties to protract litigation. The aim should always be to prevent mis-carriage of justice and expedite trial, which is the dire need of the time.

Answer to Question-B :

The objection to the admissibility or relevancy of evidence contained in the affidavit of evidence filed under Order XVIII Rule 4 of C.P.C. can be admitted at any stage reserving its resolution until final judgment in the case as held in **Ameer Trading Corpn. Ltd. Vs. Shapoorji Data Processing Ltd. [2004 (5) ALL MR (S.C.) 425]** (supra).

7. The contention on behalf of the petitioner is that the present situation would be governed by clause (ii) of para 92, above.

8. In the case of **Sudir Engineering Company** (supra), all that the Delhi High Court has held

is that a document has to be marked as exhibit either by a numerical or an alphabet so as to avoid any confusion regarding the identity of the document which has been referred to by the witness. In para 13, the Delhi High Court has held that the admission of a document in evidence is not to be confused with proof of a document. Thus, even as held by the Delhi High Court, on which strong reliance is placed, admission of the document in evidence does not tantamount to proof.

9. I have also perused the documents which are sought to be admitted in evidence i.e. annexures A to H. The Trial Court has noticed variance between the signature of Antonio Pereira on some of the annexures and has expressed that it needs proper proof. Thus, if the mere admission of the document, in evidence does not amount to proof, it is hardly material at this stage, whether they are collectively marked as 'X' or marked as exhibits. It is

pertinent to note that the petitioner had not raised any objection or has not insisted for the documents being formally marked as exhibit on 9/03/2015. The evidence of the petitioner is still in progress and all that the Court has said is that marking of the document collectively as annexures would be subject to proof and has kept this point open.

10. I do not see any manifest injustice being caused to the petitioner by the impugned order. Thus, keeping the rival contentions open, the petition is dismissed, with no order as to costs.

C. V. BHADANG, J.

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