

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 421 OF 2017**

Mr. Sabino Cotta, aged about 53 years,
businessman, Resident of H. No. 409,
Razvaddo, Varca, Salcete, Goa. Petitioner

Versus

M/S V. Naik and Associates, A Partnership
Firm represented by its Partner and
Attorney, Shri Ramchandra alias Sanjeev
Vasudeo Naik, major, married, businessman,
Resident of H. No. 393, Comba, Margao,
Goa. Respondent

Shri Clayton Fonseca, Advocate for the Petitioner.

Shri Sudin Usgaonkar, Senior Advocate with Ms. Tanvi Kamat
Ghanekar, Advocate for the Respondent.

CORAM:- C. V. BHADANG, J.

DATE:- 7th JUNE, 2017

ORAL JUDGMENT:

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

2. The petitioner is the original plaintiff, while the
respondent is the defendant before the Trial Court. The petitioner

(who is admittedly a tenant of the respondent in respect of the suit flat, where the petitioner is running coaching classes in the name and style as 'M/s Smart Tutorials'), claims that there is an oral agreement under which the respondent has agreed to sell the suit flat to him for a consideration of Rs.15 lakhs. It is also contended that the petitioner was paying Rs.60,000/- per month to the respondent.

3. The respondent filed an application (Exhibit-40) before the Trial Court for a direction to produce the statement of Account of the petitioner with Saraswat Co-operative Bank, Margao Branch (Account No. 1192) from June, 2003 to 31.03.2010. By the impugned order dated 07.03.2017, the learned Trial Court has allowed the application, which order is subject matter of challenge in this petition.

4. I have heard the learned Counsel for the petitioner and the learned Senior Counsel for the respondent and gone through the record.

5. It is submitted by the learned Counsel for the petitioner

that the learned Trial Court could not have called for the entire statement of Account. Reliance is placed on Section 6 of the Bankers' Book Evidence Act, 1891, in order to submit that in appropriate case, the Court can order the Bank to prepare and produce certified copy/s of all such entries, relevant to the matters in issue, in such proceedings. It is submitted that in such circumstances, the Trial Court could have restricted, for calling the relevant entries.

6. It is submitted by the learned Senior Counsel for the respondent that the ground based on Section 6 of the Bankers' Book Evidence Act, was not raised before the Trial Court. In any event, the learned Senior Counsel does not dispute that the respondent only wants the relevant entries by which the license fee was paid by the petitioner by way of Bearer Cheques drawn on the Account of M/s Smart Tutorials.

7. Considering the circumstances and the submissions made, in my considered view, the impugned order can be modified, in order to direct the Bank to prepare and produce the certified copy/s of all such entries in respect of the payments

made by the petitioner by Bearer Cheques in favour of the respondent. Ordered accordingly. The Bank shall prepare and furnish such statement within four weeks from the service of this order.

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

C. V. BHADANG, J.

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