

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.713 of 2017**

Shri Shivanand Shivamurthy
Harapanahalli,
major aged 35 years,
Businessman, Residing at
Plot no.57, PDA Colony,
Porvorim, Bardez,
Goa 403521

.. Petitioner

Versus

1. Smt. Sumati Sunil Bhandari,
aged about 35 years,
married, service
2. Shri Sunil Shankarrao Bhandari
aged about 36 years,
Businessman, both residing
at L442, Housing Board
Colony, Davorlim, Salcete Goa .. Respondents.

Mr. J. P. Mulgaonkar, Advocate for the petitioner.

Mr. G. Teles, Advocate for the respondent no.1.

CORAM :- C. V. BHADANG, J.

DATE:- 15th November, 2017

ORAL JUDGMENT :

On 07/08/2017, a notice for final disposal was issued to both the respondents. The respondent no.1 has appeared. However, there is no appearance on behalf of the second respondent. I have heard Shri Mulgaonkar, the learned Counsel for the petitioner and Shri Teles, the learned Counsel for the first

respondent and the petition is being disposed of finally.

2. The petitioner is challenging the order dated 18/03/2017 and the order dated 29/06/2017, passed in Civil Suit No.17/2017/A by the learned Senior Civil Judge at Mapusa. By the impugned order dated 18/03/2017, an application for production of documents filed by the respondent no.1 has been allowed. By the subsequent order dated 29/06/2017, the application filed by the respondent no.1 for amendment of the Written Statement, has been allowed.

3. It is submitted by Shri Mulgaonkar, the learned Counsel for the petitioner that the application for amendment has been allowed simply based on the fact that the production of the documents is allowed. In the submission of Shri Mulgaonkar, such a course cannot be countenanced. It is submitted that there are no averments in the application for amendment as to why proposed amendment could not be sought prior to the commencement of the trial as is required by proviso to Order VI, Rule 17 of C.P.C. It is submitted that the evidence of the petitioner is already concluded and as such amendment and the production of the document shall cause prejudice. It is submitted that the only contention raised in the written statement is that Agreement of Sale is obtained under duress and coercion and no other defence has been raised.

4. Shri Teles, the learned Counsel for the respondent no.1 submits that the documents are necessary to show that the subject property is encumbered as the respondent no.1 has obtained loan on the basis of the said property by mortgaging it. The documents are relevant to show that the respondent no.1 was in financial difficulty, which aspect has already been pleaded and this will go to show the circumstances in which the respondent no.1 was coerced or put under duress to execute the Agreement of Sale and the Power of Attorney.

5. On hearing the learned Counsel for the parties and on perusal of the record, it appears that the learned Trial Court has allowed production of the documents by an order dated 18/03/2017. Subsequent order dated 29/06/2017 allowing amendment is only based on the fact that earlier production of the documents is allowed. As has rightly been submitted by Shri Mulgaonkar, the learned Counsel for the petitioner, such course adopted cannot be countenanced. The Court has to first find out whether the proposed amendment is to be permitted, which the Court can do, once the Court concludes that the amendment is necessary for deciding the real controversy in the suit. The Court will also have due regard to the proviso to Order VI, Rule 17 of C.P.C., while considering the question of allowing the amendment where the amendment sought is at a stage after commencement of

the trial. It is only when the Court is inclined to grant amendment that the documents in support of such plea, (which is introduced by way of amendment), can be permitted. In the overall circumstances, in my considered view, it would be appropriate if the learned Trial Court reconsiders the application for amendment as also the application for production of documents in the light of the observations made above.

6. In such circumstances, the petition is partly allowed. The impugned orders dated 18/03/2017 and 29/06/2017 are set aside. The application (Exh.D-93) for amendment of the Written Statement and the application (Exh.D-89) for production of the documents are remitted back to the learned Trial Court for deciding them afresh in accordance with law and after hearing the parties. Rival contentions of the parties are left open. In the circumstances, there shall be no order as to costs.

C. V. BHADANG, J.

SMA