

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 743 OF 2017**

Prem s/o Roshanlal Kohli,
Age about 77 years, Occupation, Business,
R/O 88, Stormount Drive, Hayes,
Middlesex UB3 1 RH, United Kingdom,
Through his Special Power of Attorney,
Vicky D'Souza S/o Mohanlal,
Aged about 50 years, Occupation Business,
R/O Rookery Nook, H. No.2/115-A,
Naikavadoo, Calangute, Bardez, Goa. Petitioner.

Versus

Gama Builders Pvt. Ltd.;
Through its Director,
Having office at Karekar Building,
Mapusa, Bardez, Goa. Respondent.

Mr. Anup Lohiya, Advocate for the Petitioner.

Coram:- C. V. BHADANG, J.

Date:- 16th August 2017.

Oral Order:

Heard the learned counsel for the petitioner for some time.

The petitioner, who is the sole defendant in a suit, filed an application for de-exhibiting certain documents on the ground that the original of the said documents were not produced nor permission to produce secondary evidence was sought for. The learned trial court by the impugned order has partly allowed the application thereby de-exhibiting documents at Exhibits C-34, C-36, C-37, C-38, C-39, C-40, C-41, C-44, C-47, C-49 and C-50. However, the

trial court has refused to de-exhibit the remaining documents on the ground that objection was not raised to marking exhibit to the said documents at the time when the documents were exhibited and mere change of the advocate would not be a ground to de-exhibit them.

2. The learned counsel for the petitioner has referred to the full bench judgment of this Court in the case of **Mr. Hemendra Rasiklal Ghia Vs. Subodh Roy (Writ Petition No.623 of 2005)**, in which this Court gave following guidelines:

(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 matter reserving decision on question until final judgment in the case, is relevant, when following guidelines are laid down.

3. The learned counsel submits and rightly so, that the present case

is governed by clause (iii) of the guidelines as set out above in which the objection to the document can be raised at any stage of the matter. However, the submission in my considered view overlooks the later part of clause (iii) which shows that in such a case the Court can reserve decision on question as to marking an exhibit of the document until final judgment in the case. It is now well settled that mere marking of an exhibit does not amount to proof and considering clause (iii) of the guidelines issued by the Full Bench of this Court in the case of **Mr. Hemendra Rasiklal Ghia (supra)**, it would be open for the trial court to consider whether the documents can be said to be legally proved at the stage when the suit is finally heard. Subject to this, no case for interference is made out. The petition is dismissed.

C. V. BHADANG, J.

ap/-