

IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL REVISION APPLICATION NO. 52 OF 2016

SHRI. ANTONIO G. BRAGANZA, THR.
POA HOLDER AND ANR.,

... Petitioners

Versus

MR. ANTONETTO JOHN D'SOUZA @
JOHNNY D'SOUZA ABD 9 ORS.,

... Respondents

Shri Vivek Angelo Rodrigues, Advocate for the petitioners.

Coram:- M. S. SONAK, J.

Date:- 12th April, 2017

ORAL ORDER:-

Heard Shri V. Rodrigues, learned Advocate appearing for the petitioners.

2. The challenge in the Civil Revision Application is to an order dated 11.11.2016 by which the learned Trial Judge has dismissed the petitioner's (original plaintiff) application seeking a decree on admission by invoking provision of Order XII Rule 6 of CPC.

3. Shri Rodrigues, submits that there are admissions in the following judgment which are part of the record and on basis of these, this is a fit case to issue a decree on admission rather than requiring the petitioner to proceed with the trial in the suit. The documents are as follows:

i. NOC issued by the Town and Country Planning, defendant Nos.8 and 9, vide Ref. No.DB/11711/2599/95 dated 20.12.95.

ii. Report of the TCP bearing Reference

No.CNV/BAR/61/96/1122 dated 19.02.1996

iii. Licence dated 15.1.1996 of the Office of the Village Panchayat, Calangute vide permission No.-VP/Cal/F-13/96-97/L-48/2290 of defendant no.6.

iv. read with the contents of letter dated 19.10.1995, of the defendant no.1,

v. inturn read with the contents of the letter dated 9.8.2007 of the Directorate of Panchayats, Government of Goa, the plaintiff is otherwise enlisted to a judgment upon admission.

4. In addition to the aforesaid, Shri Rodrigues, placed heavy reliance upon the construction plan, which was submitted by the respondent no.1 to the authority for permission to develop/construction. Shri Rodrigues, submits that these plans itself constitute an admission that the respondent no.1 was required to maintain a four mts access. Shri Rodrigues submits that such access is clearly depicted in this plan and it is precisely in respect of this access that the petitioner seeks a decree on admission. Shri Rodrigues, relies upon the decision in the case of Charanjitlal Mehra Vs. Kamal Saroj Mahajan, AIR 2005 SC 2765 in support of his submission that such a decree can be made on the basis of admission of this nature.

5. Very outset, it is required to note that the suit in which the petitioner seeks a decree on admission is at an advanced stage. The petitioner/plaintiff's evidence has already commenced. This Court, by its order dated 14.1.2015 in Writ Petition

No.770/2014, has already ordered the expedition of the suit. Secondly, despite attempts, the petitioner has not obtained any interim order from the learned trial Judge in the matter of such access. It is not as if no attempts were made to obtain such interim relief. Matter has travelled to this Court as well as the Hon'ble Apex Court, however, fact remains that despite existence of the aforesaid documents, there was not even an interim order operating in favour of the petitioner in respect of the suit access. This is not to suggest that operation of such interim order is necessary for grant of a decree on admission. However, it is settled that a decree on admission can be granted only when admissions are clear, unambiguous and unconditional.

6. In the present case, the documents upon which reliance is placed by the petitioner are mainly licenses, permissions or approved plans mainly issued by certain statutory authorities. It is true that such licences refer to maintenance of traditional access. However, that by itself cannot be construed as clear, unambiguous and unconditional admissions. Provisions of Order XII Rule 6 of CPC itself makes it clear that power conferred thereby, is discretionary. No doubt, discretion has to be exercised judiciously.

7. On perusal of the impugned order, it is clear that the learned Trial Judge has examined the documents/ material upon which reliance has been placed by the petitioner. Thereafter concluded that this is not a fit case to exercise discretion and

issue a decree on the basis of so called admission. There is nothing unreasonable or injudicious to exercise such jurisdiction.

In fact several relevant parameters have been taken into consideration by learned trial Judge. The suit is already at advanced stage. In case, all the documents upon which petitioner places reliance are tendered in evidence the opposite party will have an opportunity to test the same by way of cross examination. The opposite party will also have opportunity to furnish its own explanation in the matter of such documents. All these process cannot be by-passed in a matter of this nature by insisting upon the decree on admission.

8. Accordingly, there is no case made out to interfere with the impugned order. It is however, clarified that none of the observations, in the impugned order or for that matter present order are to be considered as any reflection upon the merits of the matter. The suit will have to be decided in accordance with law and on its own merits taking into consideration the evidence which parties will produce on record.

9. CRA is accordingly dismissed. There shall be no order as to costs.

M. S. SONAK, J.