

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 1103 OF 2017

JOSEPH ROBERT SEQUEIRA., ... Petitioner

Versus

MARIO LOBO AND ANR., ... Respondents

Adv. Pranay A Kamat for the Petitioner.
Adv. V. P. Thali for the Respondents.

Coram:- C. V. BHADANG, J.

Date:- 11th December 2017

Oral Order:

The challenge in this petition is to the order dated 22/11/2017 passed by the learned trial court refusing to allow the examination of the witness Mr. Allison D'Souza on behalf of the petitioner on the ground that his name does not figure in the list of witnesses. By a subsequent order dated 30/11/2017, the learned trial court has refused to review the order dated 22/11/2017.

2. On behalf of the petitioner reliance is placed on the decision of the Supreme Court in the case of MANE RAM Vs. BRIJ MOHAN AND OTHERS AIR 1983 SC 925, in order to submit that in a case where a party does not require the assistance of the Court in securing the presence of the witness, the name of the

such witness is not required to be listed and the Court cannot refuse to permit the party to examine a witness on the ground that the name of the witness does not figure in the list of the witnesses.

3. The learned counsel for the respondent has produced a copy of the Affidavit in Evidence of Mr. Allison D'Souza. He submits that the evidence of the witness cannot be said to be relevant for deciding the controversy in the suit. He submits that the trial court has only said that without seeking the leave of the Court the witness cannot be examined.

4. I have considered the circumstances and the submissions made. The trial court has refused to permit the petitioner to examine the witness on the only ground that the name of the witness does not figure in the list of witnesses. A bare perusal of Order XVI Rule 1 and Rule 1-A of C.P.C would show that the provisions of Rule 1-A are subject to the provisions as contained in Order XVI Rule 1(3) of the Code.

5. A perusal of the judgment in the case of Mange Ram (supra) would show that it is rendered in relation to Order XVI Rules 1 and 1A and rule 22 of the Rules, framed by the High Court of Punjab and Haryana. Be that as it may, I have also gone through the Affidavit of the said witness and all that the witness has

stated is about the legal position in terms of the provisions of the Goa Panchayat Raj Act. I do not find that the evidence can be said to be relevant. For this reason, I decline to entertain the petition, which is accordingly dismissed.

C. V. BHADANG, J.

ap/-