

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.516 of 2018**

Shri Shrikrishna N. Talak,
Major in age,
R/o Flat No.B/T-1, 3rd floor,
Shambhavi Co-op Housing Society
Ltd. Comba, Margao,
Goa. .. Petitioner

Vs.

Shri Shambhavi Co-operative
Housing Society Ltd.
Office at Comba, Margao-Goa .. Respondent.

Shri Shailesh Redkar, Advocate for the petitioner.

Shri A. R. Kantak and Ms. R. Kantak, Advocates for the respondent.

CORAM :- C. V. BHADANG, J.

Date : 19th July, 2018

ORAL JUDGMENT :

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

2. On hearing the learned Counsel for the parties, I find that this petition has to succeed on a short count.

3. In an appeal filed by the petitioner before the Co-

operative Tribunal, an application purportedly under Order XLI, Rule 27 of CPC was filed for production of documents, namely Sale Deed dated 07/08/1998 and Agreement dated 27/04/1991. A specific contention was also raised before the Tribunal based on the decision of the Supreme Court in the case of ***Union of India Vs. Ibrahim Uddin and another***; (2012)8 SCC 148, in order to submit that the application has to be considered at the final hearing of the appeal. The Tribunal has dismissed the application on merits. The appeal is still pending. A bare perusal of the impugned order shows that the Tribunal has noted the decision of the Supreme Court in the case of ***Ibrahim Uddin*** (supra). However, there is absolutely no consideration as to why the Tribunal has not given effect to the decision of the Supreme Court by postponing the hearing of the application at the final hearing of the appeal.

4. Shri Kantak, the learned Counsel for the respondent submitted that even otherwise, no fault can be found with the impugned order on merits in as much as the contentions based on the sale deed and agreement, were not raised before the Registrar's Nominee, whose order is the subject matter of challenge before the Tribunal. I am afraid, the contention cannot be accepted. First this Court has to look into the aspect whether

the Tribunal has considered and given effect to the decision of the Supreme Court in the case of ***Ibrahim Uddin*** (supra), which in no uncertain terms holds that an application of the present nature filed under Order XLI, Rule 27 of CPC, has to be considered along with the appeal. For this reason, the impugned order is hereby set aside. The application filed by the petitioner for production of documents is restored to the file of the Administrative Tribunal. The Tribunal shall consider the application at the final hearing of the appeal on its own merits.

5. It is made clear that this Court has not expressed any opinion on the merits of the application.

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

C. V. BHADANG, J.

SMA