

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 895 OF 2018

OCTAVIANO PIRES.,

... Petitioner

Versus

ULHAS DATTARAM RAIKAR (DEC) THR.
HIS LRS.,

... Respondent

Shri Neelesh A. Takkekar, Advocate for the Petitioner.

Shri Hanumant D. Naik, Advocate for the Respondents.

Coram:- C. V. BHADANG, J.

Date:- 28th November 2018

ORAL ORDER:

Heard Shri Takkekar, the learned Counsel for the petitioner and Shri Naik, the learned Counsel for the respondents.

2. The petitioner, who is the original plaintiff, is challenging the order dated 16.08.2018, passed by the learned Senior Civil Judge at Mapusa, in Regular Civil Suit No. 166/2005/C. By the impugned order, the learned Trial Court has refused to allow the production of the document, namely, the electoral roll of 2009 of assembly constituency 6 Siolim (SO5) Goa, showing the additions and deletions to the list.

3. Undisputedly, after the closure of the evidence of the petitioner, the defendants/respondents produced two documents,

namely, the electoral roll of the aforesaid constituency for the years 2007 and 2008, which have been exhibited as Exhibits 122 and 123. The petitioner sought to meet the effect of these two documents, by producing the electoral roll of 2009. In short, according to the petitioner, the names of the respondents, were figuring in the list at Exhibits 122 and 123, while their names stood deleted in the electoral roll of 2009. When the petitioner made an attempt to cross examine DW-1 with relation to the electoral roll of 2009, an objection was raised on behalf of the respondents that DW-1, not being the author or maker of the said document, the confrontation cannot be permitted. The learned Trial Court has upheld the objection, however, on a different ground. The learned Trial Court found that the document although a public document, the petitioner cannot bring the said document on record, "through the respondents".

4. On hearing the learned Counsel for the parties, it does appear that as per Order XIII, Rule 1(3) of CPC, the provisions of XIII, Rule 1(3) of CPC would not apply to the documents produced during the cross examination of the witnesses of the other parties. As noticed earlier, the documents at Exhibits 122 and 123 were produced by the respondents, after the closure of the evidence of the petitioner and thus, the petitioner is justified in producing the document for the subsequent year i.e. year 2009, in order to meet the effect of the document at Exhibits 122

and 123. The learned Trial Court has already found that the document is a public document and this is not a case where the petitioner was trying to bring the document on record, "through the respondents".

5. In that view of the matter, the impugned order will have to be set aside. Hence, the following order is passed:

O R D E R

- (a) The petition is allowed.
- (b) The impugned order is set aside.
- (c) The petitioner shall be permitted to cross examine DW-1 in relation to the electoral roll of 2009, which will be exhibited by the Trial Court, subject to all just exceptions as to the proof of the same.
- (d) The petition is disposed of in the aforesaid terms, with no order as to costs.

C. V. BHADANG, J.

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