

**IN THE HIGH COURT OF BOMBAY AT GOA****WRIT PETITION NO.1059 OF 2019**

The Mazania of the Temple  
of Shree Mahalaxmi and its affiliates  
Through its Attorney  
Shri Mahesh Khandolkar  
Office at Shree Mahalaxmi Temple,  
Panaji-Goa.

.... Petitioner

V/s.

1. Shri Arvind Gajanan Shenvi Ghatkar,  
Son of late Gajanan Shenvi Ghatkar,  
Major of age, and his wife.

2. Mrs. Smita Arvind Ghatkar,  
Wife of Shri Arvind Gajanan  
Shenvi Ghatekar, Major of age,  
Both r/o. Kamat Retreat,  
Durgawadi, Taleigao-Goa.

.... Respondents

Shri Shriram S. Polle, Advocate for the Petitioner.

Shri Ajit R. Kantak, Advocate for the Respondents.

**Coram:- DAMA SESHADRI NAIDU, J.**

**Date:- 9<sup>th</sup> December 2019**

**ORAL JUDGMENT:****Facts:**

The petitioner is the plaintiff in Regular Civil Suit No.78/2015/D, before the Civil Judge, Junior Division, Panaji. It has filed the suit against the respondents-defendants for a declaration of title and for perpetual injunction. It was in 2015.

2. After examining four witnesses, in August 2019, the plaintiff applied to bring on record certain documents. It is said to have been allowed. Later, the plaintiff issued a notice to the defendants under Order XII Rule 3 of CPC; it wanted them to admit the documents it has just brought on record. But through their reply, the respondents disowned those documents. In that backdrop, the plaintiff applied to the trial Court for a suitable direction to the respondents to admit those documents. In the face of the respondents' denial, the trial Court refused to interfere. Impugning the trial Courts' order, dated 20.11.2019, the plaintiff has filed this Writ Petition.

3. The petitioner's counsel Shri S. Polle has argued that the respondents have not expressly denied their executing the documents. According to him, they are public documents, having been registered. Their veracity cannot be doubted or disputed. To support his contention, he has relied on *Narbada Devi Gupta v. Birendra Kumar Jaiswal*<sup>1</sup> and on *M/s. Sociedade de Fomento Industrial Ltd. v. Smt. Sita Shripad Narvekar*,<sup>2</sup> an unreported judgment of this Court.

4. On the other hand, the respondents' counsel Shri Ajit Kantak has submitted that Order XII serves the purpose of shortening the litigation based on the opposite party's admissions. But once the party to the

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<sup>1</sup> (2003) 8 SCC 745

<sup>2</sup> (2016) 2 Mah LJ 958

proceedings denies or disowns the documents, in an adversarial adjudication that party cannot be compelled to admit documents. It is for the other party to prove those documents in accordance with the law. He has also drawn my attention to paragraph 5 of the reply the respondents have filed before this Court.

5. Heard.

**Discussion:**

6. Indeed, as rightly contended by the respondents' counsel, the salutary purpose of Order XII is to shorten the litigation. And this shortening of the litigation happens on the admissions of either party.

7. Let us examine the statutory position in this regard. Admissions are not conclusive proof of the matters admitted, but they may, as Section 31 of the Evidence Act mandates, operate as estoppels under that Act. Section 58 of the same Act elaborates on Section 31. Under Section 58 of the Evidence Act, facts admitted need not be proved. But as per the proviso to that section, the court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.

8. Section 30 of CPC deals with the court's "power to order discovery and the like." Subject to statutory limitations, the court may, at any time, require one party to deliver and another party to answer interrogatories. Similarly, it may pass orders affecting the admission of

documents and facts, and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence. Order 8, Rules 3 to 5 deal with different shades of denial: specific and evasive denials. Rule 5, however, mandates that every allegation of fact in the plaint shall be taken as admitted (a) if it is not denied specifically or by necessary implication, and (b) if it is “stated to be not admitted” in the defendant’s pleadings. Only a defendant under a legal disability stands saved from this rigour of traversal. But even if the denial is specific, the court may, in its discretion require, “any fact so admitted to be proved otherwise than by such admission.” Thus, Rule 5 of Order 8 is analogous to Section 58 of the Evidence Act.

9. Order X of CPC deals with the examination of parties. Under Rule 1, the trial Court must ascertain whether allegations in pleadings are admitted or denied. In the first hearing, the court “shall record such admissions and denials.” Order XI deals with discovery and inspection. Though it is a precursor to admissions under Order XII, we need not dwell deep on that provision.

10. Once the plaintiff presents the plaint and the defendant the written statement in the court, it may appear either to the plaintiff or to the defendant that the nature of his opponent’s case is not sufficiently disclosed in his pleadings. Then, he is entitled to know beforehand all

“material facts” constituting the opposite party’s case and all documents in his possession or power relevant to the issue in the suit. It is to prove, maintain, or support his case; or to understand, meet with, impeach, or destroy the case of his adversary at the hearing.<sup>3</sup>

11. Where information sought is as to facts, the party may administer to his adversary a series of questions: “interrogatories”. The Judge will go through the proposed questions to decide whether they are proper and relevant and whether the other side should be compelled to answer them on oath before the trial. In legal terminology, it is called “discovery of facts”. The object of such discovery is to get admission of facts. Discovery, however, is not confined to facts. If any party wants information as to documents material to the issues in the suit from his adversary, the court may compel the other party to submit a list of documents and permit the party applying to inspect and also to take copies of those documents before the trial. Such disclosure is known as “discovery of documents”.<sup>4</sup>

12. Interrogatories, fact and document discoveries, and document inspection narrow down the controversy, avoid unnecessary expense, and shorten the litigation. Answers given in interrogatories and documents disclosed can form part of the evidence and, hence, they are very useful in the trial. Rules 1 to 11 of Order 11 deal with interrogatories. Rules 12 to

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<sup>3</sup> C. K. Thakker’s Code of Civil Procedure, Ed. 1, Vol.3, p.1243

<sup>4</sup> Id., p.1244

20 contain provisions as to discovery, production and inspection of documents. Rule 21 lays down the consequences for non-compliance. In fact, Rule 22 allows answers in interrogatories to be used in evidence by a party.<sup>5</sup>

13. Now, let us examine Order 12 of CPC. It deals with “admission.” As Sarkar’s *Code of Civil Procedure*<sup>6</sup> describes, admissions may be considered as being—(1) on record: (a) Actual, i.e., either on the pleadings (Order 7, Rule 5), or in answer to interrogatories (Order 11, Rule 22); (b) Implied: from the pleadings or by non-traverse (Order 8, Rules 3,4,5). (2) Between parties: (c) By agreement; (d) By notice. Order 12, thus, deals with admissions by notice. And all notices must be in writing, as Section 142 of CPC prescribes.

14. Any party to a suit may, as Rule 1 of Order 12 provides, notify through his pleading or otherwise in writing that he admits “the truth of the whole or any part of the case of any other party.” It is a rare procedural phenomenon, though. On the other hand, under Rule 2, either party may call upon the other party to admit, within fifteen days, any document. If the notified party refuses or neglects to admit, the costs of proving any such document shall be paid by the party so neglecting or refusing. This burden of bearing the costs does not depend on the suit outcome. Indeed,

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<sup>5</sup> Id., p.1244

<sup>6</sup> Ed.10 (2002), Vol.1, p.1166

Rule 2A creates a legal fiction. If the notified party fails to deny the document, it is deemed to have been admitted. Of course, the court may, in its discretion, require any document so admitted to be proved—despite this deemed admission. Here, too, costs follow. Conversely, if a party notifies another party to admit or produce documents which the court may find unnecessary, then the court will compel the notifying party to bear the costs. Under Rule 3A, the court has the power, at any stage, to call upon any party to admit any document. Not only the documents, but even the facts could be sought to be admitted.

15. Under Rule 4 of Order 12, any party may notify the other party any time “not later than nine days before the day fixed for the hearing”, to admit any specific fact or facts, mentioned in the notice. If the notified party refuses or neglects to admit the fact in six days or the time the court grants, the costs of proving the fact or facts shall fall on the notified party, whatever be the suit result. True, the court may rule on the cost factor otherwise, too. The proviso to Rule 4 contains a caveat: any admission made under this Rule is “deemed to be made only” in that suit. And it is not an admission to be used against the party on any other occasion or in favour of any person other than the party giving the notice. Further protection is that the court “may at any time allow any party to amend or withdraw any admission so made on such terms as may be just.”

16. If a party to the suit admits a fact in issue either through the pleading or otherwise, whether orally or in writing, the court may, under Rule 6, render the judgment at any stage, as it may think fit. The judgment may be on the party's application or on its own motion. If the admission concludes the controversy, the court need not determine "any other question between the parties."

17. Plainly put, the trial may raise many issues, and the opposite party may not wish to contest on all issues; some he may admit. That obviates the proof on an admitted fact. Then, the parties proceed to trial on other issues—that is, the issues not admitted but sought to be contested.

18. Similarly, one party may produce, say, documents attributed to the opposite party. He then may call upon the opposite party to admit those documents—their authenticity and the contents, too. It saves the trouble—time and expense—for the party to go through the rigmarole of proving those documents which the opposite party may admit. Called upon thus, if the opposite party admits them, the document becomes part of the record, and its contents stand admitted.

19. That said, no provision in CPC, as I can see, compels the opposite party to admit a document or a fact, merely because his adversary asserts that the document or the fact relates to or emanates from the

opposite party.

20. Sometime, a party may, for example, deny a document despite overwhelming evidence against him. There can be no presumption, in the light of that supposedly overwhelming evidence, that the party is deemed to have admitted the document. Nor can the trial Court, under Order 12, compel that party to admit the document. But there is a remedy for these deliberately devious, dilatory devices: the imposition of costs. If a party denies or refuses to admit a document in the face irrefutable material proof to the contrary, the court may, in its discretion, saddle the denying party with costs once the other party proves that document.

21. In other words, once the petitioner leads evidence and proves those documents against the opposite party, who initially denied them, then the trial Court will mulct the opposite party with the costs the petitioner has incurred in proving those documents.

22. In a tenancy dispute, the landlord pleaded in the plaint that he gave to the defendant certain blank stamp papers thumb-marked and signed. It was to authorise the defendant to represent him in various pending litigations. But the defendant, in his written statement, claimed the status of a tenant based on the rent receipts. Despite the defendant's assertion, the plaintiff did not amend his pleadings, thus, explaining how on the back of the printed rent receipts he happened to put his signatures.

Nor has he sought any consequential amendment, raising a plea of fraud or forgery of rent receipts. There is also no evidence to that effect. In that context, the Supreme Court in *Narbada Devi Gupta* has held that the documents were admitted and then exhibited; the plaintiff did not dispute his signatures on the back of those documents. So no further burden of proof lay on the defendant to lead additional evidence in proof of the writing on the rent receipts and its due execution by the plaintiff.

23. In *Sita Shripad Narvekar*, this Court, per a learned single Judge, has held that on a notice to admit the documents, once the party concerned does not deny the documents specifically or by necessary implication, the document shall be deemed to be admitted.

24. In this case, the petitioner notified the Company under Order XII Rule 3 to admit certain documents, claiming them to be public documents. The respondents refused to admit them. The petitioner's principal contention is that their denial is vague. Having gone through the respondents' reply to the petitioner's notice to admit documents under Order XII Rule 3, I reckon the denial is specific and does not suffer from any equivocation or ambiguity. Under these circumstances, I reckon the trial Court has rightly refused to entertain the petitioner's plea.

25. That said, I must also observe that the petitioner is not without a remedy. First, he cannot insist that the respondents should admit the

documents he has produced merely because they have been registered. Not every registered document can be termed a public document. For example, a Sale Deed, though required registration under Section 17 of the Indian Registration Act, cannot be called a public document. But the Register which records the factum of registration is a public document, however.

26. Here, the respondents have pleaded in their reply that the petitioner can introduce those documents through any of his witnesses and prove them in accordance with the law. So should the petitioner do if he chooses to.

With these observations, I dismiss the Writ Petition.

**DAMA SESHADRI NAIDU, J.**

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