

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 803 OF 2014

The Board of Trustees of the Port of
Mormugao.

... Petitioner

V/S

1] M/s. Concan Constructions Pvt. Ltd.
and another

... Respondents

Mr. M. S. Khandeparker with Mr. Ravi Gawas Advocate for
the petitioner.

Mr. Nigel Da Costa Frias, Advocate for the respondent no.1.

Ms. Yadika Mandrekar, Advocate for the respondent no.2.

Coram :- N. M. JAMDAR, J.

Date :- 13 March 2015.

Order :

Notice was issued to the respondent on 16 January 2015, which has been served. The petition is taken up for final disposal by consent.

2. By this petition, the petitioner challenges order passed by the learned Civil Judge, Senior Division, Vasco da Gama, rejecting the application of the petitioner for consolidation of two suits.

3. The petitioner has filed a suit bearing no.106 of 2013

seeking a decree directing the respondent no.1 to pay certain amount towards damages. It is the case of the petitioner that the contract entered into between the petitioner and the respondent no.1 was validly terminated. Prior to the suit of the petitioner, the respondent no.1 has filed the suit bearing no.11 of 2011 praying for a declaration that the termination of the contract, between the petitioner and respondent no.1, is illegal.

4. The learned counsel for the petitioner submitted that the cause of action in both the suits is the same and it is a fit case where they should be consolidated. The learned counsel for the respondent no.1 opposes this request.

5. In the impugned order, the learned Judge has noted that the parties in the both suits are different. However, the only different party is the Bank i.e. respondent no.2. The bank was joined as a party because the bank guarantee was issued by the bank. The bank guarantee now encashed and therefore the bank is no longer a necessary party in the suit. Therefore the first ground on which the impugned order is passed no longer survives.

6. The learned Judge has referred to the decision of learned Single Judge of the High Court of Uttar Pradesh in **P.P.Gupta vs. East Asiatic Co. Bombay, [1960] AIR (All) 184.** However, the learned Judge has not noticed the various parameters laid down in the said decision. The learned Judge has simply rejected the application without noting the detailed enunciation of law in the said judgment, and analysing it in the context of the facts and circumstances of the case and whether it is advantageous to

consolidate the suits.

7. It is therefore necessary that the application made by the petitioner is considered afresh by the learned Judge keeping in mind the law on the subject and the facts of the case, and also by taking note of the subsequent event that the bank is no longer a necessary party.

8. Accordingly, the writ petition is disposed of by quashing and setting aside the order dated 26 September 2014 and restoring the application filed by the petitioner, on record, to be disposed of in the light of what is observed above. All contentions of the parties are kept open.

N. M. JAMDAR, J.

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