

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 570 OF 2015**

1. M/s. BGC International Pvt. Ltd.,
represented herein through
Shri K. Mohan,
s/o. Late Kala Bhairava,
major of age, r/o. Door no.3864/1,
Second Cross, Gandhinagar,
Mysore, Karnataka.

2. Mr. Balaji Pothraj,
No. 906, North Block,
Manipur Center,
41 Dickenson Road,
Bangalore.

..... Petitioners

V e r s u s

1. M/s. Shree Mallikarjun Shipping
Office at 1st floor, Sunflower Apts.
Opp. St. Andrew's Church,
Vasco da Gama 403802
Represented by its proprietor
Mr. Satish K. Sail,
S/o K. Sail, major of age,
businessman,
Vasco da Gama Goa.

2. Carmona Agencies Pvt. Ltd.
Having place of business,
Office at Tilak Complex,
Vasco da Gama, Goa.
Represented by the Managing Director,
Mr. Carmelino Machado
S/o Froilana Machada,
Major of age, businessman,
r/o Bogmalo, Vasco da Gama.

..... Respondents

Mr. Anthony Joe D'Silva, Advocate for the Petitioners.
Mr. M. Pereira, Advocate for Respondent no.2.

CORAM: S. B. SHUKRE, J.
DATE: 11TH JANUARY, 2016.

ORAL JUDGMENT:

Heard the learned counsel for the petitioners and the learned counsel for the respondents.

2. Rule. Rule made returnable forthwith. Heard finally by consent.
3. This petition challenges the order dated 7/7/2015 passed by the learned Senior Civil Judge "A' Court, Ponda in Special Civil Suit no.22/2007/A thereby rejecting the application of the petitioners, who are the defendants in the original suit for grant of permission to produce the additional documents on record.
4. The suit that has been filed by the respondents against the petitioners, claims refund of advance of Rs.30.00 lakhs together with interest and other sums of money from the petitioners. The petitioners have resisted the suit by filing a written statement. The petitioner no.1 is a company and on its behalf one Shri K. Mohan, son of Kala Bhairava entered the witness box as the first

witness of the petitioners. During the cross examination of this witness, it transpired that he had not produced on record any letter of authority or copy of the resolution authorizing him to appear and depose on behalf of petitioner no.1. When the cross examination was going on, the petitioners filed an application for grant of permission to produce additional documents. Among the additional documents sought to be produced were a copy of a resolution and a letter of authority authorizing said Shri K. Mohan to depose on behalf of petitioner no.1. This application was strongly opposed by the respondents. After hearing the petitioners and the respondents, the learned Civil Judge found that the application was belatedly filed with a view to fill up the lacuna in the case without giving any justifiable cause and therefore by the order passed on 7/7/2015 rejected the application. Not being satisfied with the same, the petitioners/defendants are before this Court in the present writ petition.

5. Learned counsel for the petitioners submits that no prejudice would have been caused to the plaintiffs or the respondents by allowing of this application, as the cross examination of the petitioner's witness is still underway. He further submits that the opinion of the learned Civil Judge these documents have been subsequently created by way of an afterthought is factually incorrect as during the course of the cross examination itself, the witness of the petitioner had given a date of 17/11/2014, as the date on which

the resolution authorizing him to depose on behalf of the defendants was passed. He further submits that interest of justice would demand that the application so filed by the petitioners is allowed.

6. Learned counsel for the respondents submits that this is not a fit case for interfering with the exercise of discretion on the part of the learned Civil Judge. He submits that the date of 17/11/2014, when specifically asked in this regard during the course of cross examination, was given by the petitioner's witness (DW.1) in a fictitious manner and later on, the resolution and letter of authority were manufactured by the petitioners just to synchronize their dates with the date so declared by DW.1 in an imaginative way. He further submits that these documents were created by way of an afterthought just to take away the effect of cross examination and it is here that prejudice to the respondents lies. He further submits that rules of procedural law, exist for assisting the parties and advancing cause of justice and there is also something like principle of miscarriage of justice. In the instant case, he further submits, if these documents are allowed to be produced on record, it would result in doing injustice to the respondents. He also submits that the application itself has been filed in a very cavalier manner by the petitioners. According to him, the only reason given in the application for non production of the relevant documents at the time of filing of the written statement is an inadvertent mistake and surprisingly, he further submits, the respondents have

not elaborated as whose inadvertence or mistake it was because of which the documents could not have been filed well in time. For all these reasons, the learned counsel urges that the petition be dismissed.

7. On perusal of the impugned order dated 7/7/2015, it is seen that the learned Civil Judge rejected the application mainly on two grounds. Firstly, that the documents were in the opinion of the learned Civil Judge were created and manufactured with a view to "sabotage and subvert" the cross examination and secondly that the procedural law mandating that all necessary documents should be produced before the settlement of issues, so that the parties would know the documents of each other's case before stepping into the witness box did not permit such an application.

8. Upon consideration of the rival arguments, the stage of the present case and the nature of the documents sought to be produced in evidence by the petitioners, I am of the view that both the grounds put forth by the learned Civil Judge for rejecting the application are not consistent with what is borne out from facts of the case and the law applicable to them.

9. It must be noted here that the provisions relating to powers of the Court to grant leave to produce additional documents fall within the province of the procedural law and it is now well settled that procedural law is there for

rendering assistance to the parties as well as the Court so that substantial justice is done. It has been often said that procedural law is a handmaiden of justice and the end is advancing cause of substantial justice which is to be achieved by using provisions of procedural law in an appropriate manner. These provisions are a tool for reaching a certain goal which is of substantive justice and do not constitute by themselves the goal. A similar view has been expressed by the learned Single Judge of this Court in the case of **Moharaj Rupchand Jain Vs. Kewalchand Hastimal Jain and Ors.**, reported in AIR 2007 Bom. 69. In para 8 the learned Judge observed that the provisions provided under Order 7 Rule 14 exist essentially to assist the parties and the Court to arrive at an appropriate decision in the matter and when no prejudice is seen to be caused to the other side, the Court must exercise its discretion by granting the necessary leave.

10. Now, it would have to be seen as to whether in this case as submitted by the learned counsel for the respondents, there is miscarriage of justice or causing of prejudice to the respondents by allowing the production of such additional documents or not.

11. It is not in dispute that the first witness of the petitioners, i.e. DW.1 is still under cross examination by the respondents. It was during the cross examination of the witness that it was revealed that this witness had entered

the witness box without producing before the Court his authority to depose on behalf of the petitioners. Alarmed by this lacuna, the petitioners immediately sought to make amends and therefore they filed an application for production of additional documents in the nature of authority conferred upon this witness for tendering evidence on behalf of the petitioners. Such a response on behalf of the petitioners could be said to be an attempt to prevent any further damage to their case. But, the question is, whether or not by such an attempt any prejudice would be caused and in my view, the answer has to be in the negative. The reason being that DW.1 is still under cross examination and necessary questions can always be put to him on this aspect or in the context of what has been said to be an afterthought or attempt to "repair" the case of the petitioners. The finding of the learned Civil Judge that the attempt is an afterthought and a damage repair exercise is actually a finding on merits of the case. This can be done after complete evidence is available at which stage the learned Civil Judge may always draw appropriate conclusion with regard to the placing reliance or not placing reliance upon the authority given to said witness. Such a finding cannot be recorded at this stage. About the argument that these two documents have been created and manufactured, I would say, same observations as earlier would have to be made. This would also be a matter touching upon the merits of the case and the learned Civil Judge would have to draw necessary inferences in this regard only at the time of final hearing. At this stage, the learned Civil Judge

cannot say that these documents have been manufactured or created with back date to sabotage and subvert the cross examination. The findings so recorded by the learned Civil Judge would only imply foreclosing the defence of the petitioners, if any, in this regard. Besides, in order to reach these conclusions a further opportunity would have to be given to the petitioners to adduce some additional evidence, which would be possible only after documents are brought on record.

12. So far as concerned the reason given by the learned Civil Judge that procedural law mandates that all necessary documents be produced before settlement of issues, I must say that the learned Civil Judge is not exactly on the target in the sense that in making such an observation the learned Civil Judge appears to have resorted to the provisions of Order 7 Rule 14, although he has made no mention of this provision while making it. This provision applies to production of documents by a plaintiff and not by the defendant. In any case, the provision is discretionary and it has to be operated in a manner that Court is able to ascertain the truth and put an end to the controversy, not on technical but on substantive grounds. In other words it has to be construed liberally and not in a pedantic way. Of course, the extent to which the liberal interpretation of the provision should go would depend upon the facts and circumstances of each case. In the instant case, from the nature of the documents themselves it becomes crystal clear that the

documents could not have been produced at the time of filing of the written statement by the petitioner, as the petitioner no.1 being the company would always require some time to decide upon as to who would be the person fittest in its opinion to tender evidence on its behalf.

13. In the circumstances, I find no substance in the arguments of the learned counsel for the respondents. I am of the view that the impugned order is arbitrary and perverse and as such, cannot stand the scrutiny of law. The petition deserves to be allowed.

14. The petition is allowed. The impugned order is quashed and set aside. The application for production of additional documents "Exhibit 87-D" is allowed. All contentions on merits of the case are kept open.

15. Rule is made absolute in these terms. No costs.

S. B. SHUKRE, J.

Ap/-