

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.768 OF 2016

1 Mr. Ashok Bhat
Aged about 66 years,
Son of late Shri Bachu Bhai
Indian National.

2 Mrs. Padma Ashok Bhat
Wife of Shri Ashok Bhat
Aged 66 years.
Indian National,
Both R/o. House No.6/198,
Behind Fantasy Hotel and
Resort,
Cobravaddo, Calangute,
Bardez-Goa.

3 M/s. Par Fragrance Pvt. Ltd.
Rep. By the Managing Director,
Mrs. Padma Bhat,
Aged 66 years,
Indian National,
Both R/o. House No.6/198,
Behind Fantasy Hotel and
Resort,
Cobravaddo, Calangute,
Bardez-Goa.
All Represented herein through
their authorized signatory
Shri Vinod Patil

.... Petitioners

Versus

1 Mr. Mario Francisco Lobo,
Son of (not known),
Major in age (age not known),
Indian National,
R/o. H.No.7/36, Salmona

Saligao, Bardez-Goa.

2 Antonio Joao Bosco Lobo,
Son of (not known)
Major in age (age not known),
Indian National,
R/o. E/8-396, Feira Alta,
Mapusa, Bardez-Goa.

3 Fernando Jose Lobo,
Son of (not known),
Major in age (age not known),
Indian National,
R/o. H.No. not known,
Behind Damodar Temple,
Margao, Salcete-Goa.

4 Mr. Luis Francisco Lobo,
Son of (not known)
Major in age (age not known),
Residents of Toronto
Both represented by their
Attorney
Antonio Joao Bosco Lobo,
Major in age (age not known),
Indian National,
R/o. E/8-396, Feira Alta,
Mapusa, Bardez-Goa.

.... Respondents

Shri E. Uspakar, Advocate for the Petitioners.

Mr. R. Menezes with Advocate Ms. C. Ribeiro, Advocate for
the Respondents.

CORAM: C. V. BHADANG, J.
DATE: 4th October, 2016.

ORAL JUDGMENT:

Rule made returnable forthwith. The learned counsel for the respondents waives service. Heard finally by consent of parties.

2. At the outset the learned counsel for the petitioners, on instructions, withdraws the allegations/grounds attributing bias to the learned trial Judge. In such circumstances, the averments/grounds attributing bias to the learned trial Court stand deleted. The learned counsel for the petitioners undertakes to carry out the necessary amendment forthwith.

3. The challenge in this petition is to the order dated 3/8/2016 and order dated 5/8/2016 passed by the learned Civil Judge Junior Division at Mapusa in Regular Civil Suit No.194/2006/F. By the impugned order dated 3/8/2016, the learned trial Court has refused to grant an adjournment of

three months sought by the petitioners. By the impugned order dated 5/8/2016 the evidence of the petitioners/defendants is closed.

4. It is contended on behalf of the petitioners that although the learned trial Court has observed in para 5 that after the evidence of the respondents/plaintiffs was closed on 20/4/2016 there were 13 dates of hearing before which the petitioners furnished a copy of the affidavit in evidence of DW.1 Mr. Rajiv Bhatt, it is pointed out that in the interregnum that there was an application for amendment filed and was decided. It is also submitted that the concerned witness had suffered an accident and the witness is at Mumbai and under these circumstances the petitioners were seeking a three month long adjournment. It is submitted that earlier the respondents were granted such a long adjournment on the ground of one of the respondents/plaintiffs being abroad.

6. On the contrary it is submitted by the learned counsel for the respondents that the petitioners have secured several adjournments. It is submitted that the learned trial

Court had also indicated that the witness may be examined by way of appointment of a Commissioner, which opportunity was not availed of. The learned counsel for the respondents states that the petitioners have been granted enough indulgence by the trial court which would be apparent from the roznama. It is submitted that the impugned order does not suffer from any infirmity.

In the alternative, it is submitted that in the event this Court is inclined to permit the petitioners to lead evidence, the same may be subject to payment of costs.

7. It is submitted by the learned counsel for the petitioners, on instructions, that DW.1 would remain present before the trial Court on 24/10/2016 or any other subsequent date to which the case may be adjourned by the trial Court and no further adjournment shall be sought. The statement is accepted.

8. On hearing the learned counsel for the parties and on perusal of the impugned order, I find that the petitioners could have acted with greater expedition. The learned trial

Court had also indicated that the witness can be examined through a Commissioner or any other officer of the company can be examined. The petitioners could have taken benefit of the same. It is high time that the parties take benefit of all the permissible avenues including the development in the IT sector for expediting the judicial process. Be that as it may, having regard to the fact that the concerned witness had suffered an accident (of which the medical report is on record) in which he had suffered a fracture of the neck femur and in order to afford a fair opportunity to the petitioners, I find that the petitioners can be permitted to lead evidence subject to the condition of payment of costs of Rs.10,000/- (Rupees ten thousand only) to the respondents.

9. In the result the following order is passed:

ORDER:

- (i) The impugned orders dated 3/8/2016 and 5/8/2016 are hereby set aside, subject to payment of costs of Rs.10,000/- to the respondents on or before 24/10/2016.
- (ii) The petitioners shall keep DW.1 present for his

examination and shall not seek any further adjournment.

(iii) The parties to appear before the trial Court on 24/10/2016.

(iv) Rule is made absolute in the aforesaid terms.

C. V. BHADANG, J.

Ap/