

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 306 OF 2016.

M/s. SPARROW TELEVISION (P) LTD.,
A company registered under the
Indian Companies Act
Having its registered office at
345, Raheja Arcade,
1/1, Kormangda Industrial Estate,
Bangalore - 560 095
Represented herein by its
Authorised Representative,
Ms. Ujwala Uttam Chandayakar,
Major of age,
Daughter of Uttam Hari Chandayakar
Resident at 23/2, Anandi Sadan,
Khol, Issorcem,
Cansaulim - Goa
(appointed vide Resolution dated
05/10/2015 passed in the BOD
Meeting held on 05/10/2015)

..... Petitioner

Versus

1. Mr. UDAY D. NAIK,
Major of age, married,
Business,
Proprietor of Fine Fet,
Nagoa Patona,
Verna, Salcete - Goa
2. THE DIVISIONAL MANAGER (**DELETED**)
Oriental Insurance Co. Ltd.,
Goveia Chamber,
3rd Floor, Heligado Salgao Road,
Panaji - Goa.
3. THE MANAGER
Oriental Insurance Co. Ltd.,
Pereira Chamber,
1st Floor,
Vasco-da-Gama, Goa.

..... Respondents.

Mr. Ashwin D. Bhobe, Advocate for the Petitioner.
Mr. Abhay Nachinolkar, Advocate for the Respondent no. 1.

Coram:- C. V. BHADANG, J.

Date:- 28th April, 2016

ORAL JUDGMENT

Heard. Rule made returnable forthwith. Learned Counsel for the Respondent no. 1 waives service. There is no appearance on behalf of Respondent no. 3 though served.

2. A notice for final disposal was issued in this case on 17.03.2016. As such, the petition is taken up for final disposal.

3. The Petitioner who is the Plaintiff has filed a suit for compensation against Respondent no. 1 and 3 being Regular Civil Suit No. 9/2011/B which is pending before the Adhoc Civil Senior Judge 'B' Court at Vasco-da-Gama. The original Defendant no. 2 i.e., the Divisional Manager, Oriental Insurance Company Ltd, has been deleted before the Trial Court.

4. The present petition arises out of an Order dated

01.09.2015 below application at Exhibit 91 filed by the Petitioner. That was an application filed by the Petitioner under Section 66 of the Indian Evidence Act praying for issuance of a notice to the Divisional Manager, Orinetal Insurance Company Ltd., at Panaji-Goa for production of the original documents and certified copies of the documents, list of which was annexed to the application.

5. The impugned order records that the Respondent/defendant had given no objection for the same. However, learned Trial Court rejected the said application by the impugned order. It was found that the Petitioner had filed similar application earlier which was dismissed on 26.02.2015 on the ground that the petitioner had not complied with the requirements of Section 66 of Indian Evidence Act, namely, of giving notice to the other side for production of documents. The learned Trial Court found that the party who wants to produce secondary evidence has to give notice to the other side for production of the documents. In the view of the Trial Court "The Court cannot do the work of the party seeking to produce secondary evidence and issue

notice to the concerned person asking for the documents". In this view of the matter, the application came to be rejected.

6. Learned Counsel for the Petitioner states that now the compliance with the requirements is made. That apart, he submits that the prayer in the application may not be appropriately worded as the Petitioner was only seeking summons for production of documents as contemplated under Order XVI Rule 6 of CPC. In fact, the impugned order would show that the Trial Court has observed that for any such relief the Petitioner is at liberty to take recourse to the said provision.

7. Learned Counsel for the Respondent no.1 states that already a liberty is granted and this Court may not entertain the petition.

8. Considering the limited controversy, on the point and the fact that the Petitioner is only seeking issuance of summons for production of documents which may be covered under Order XVI Rule 6 of CPC and that the Respondent had given no objection for the same, I find

that the petition can be favourably entertained. In such circumstances, the following Order is passed:

O R D E R

(i) The petition is allowed. The impugned order is set aside.

(ii) The Trial Court shall issue summons to the Divisional Manager, Oriental Insurance Co. Ltd., Goveia Chamber, 3rd Floor, Heligado Salgao Road, Panaji - Goa; for production of documents as prayed.

(iii) Rule is made absolute in the aforesaid terms, with no order as to costs.

C. V. BHADANG, J.

msr.