

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 261 OF 2017**

M/s. MSPL Limited.,
A company incorporated under
the Companies Act, 1956
having its registered Office at
'Baldota Bhavan', 117, Maharshi
Karve Road, Mumbai and
Regional Office at B S-5,
Campal Trade Centre,
Panaji-Goa, through their
Vice President-M & L,
Mr. Mohit Ratolikar,
and Smt. Anju Gopalrao Desai

.... Petitioners

V e r s u s

1. The Board of Trustee of the
Port of Mormugao,
a body corporate constituted
under the Major Port Trust Act, 1963
having their office at Headland Sada,
Mormugao Goa-403804,
represented by their Constituted Attorney,
Mrs. Hemangi Arsekar,
wife of Shri H. Arsekar, Indian National,
major I age, occupation-service,
residing at Headland-Sada,
Mormugao, Goa-403804 and anr.

..... Respondents

Shri M. Pereira, Advocate for the Petitioners.

Shri B. Khandeparkar, Advocate for the Respondents no.1.

CORAM: M. S. SONAK, J.

DATE: 28th April, 2017.

ORAL ORDER:

Heard Mr. M. Pereira, the learned counsel for the petitioner and Mr. B. Khandeparkar, the learned counsel for the respondents.

2. The learned counsel for the parties states that the respondent no.2 is a proforma party and its presence is not necessary for the disposal of this writ petition.

3. Accordingly notice to the respondent no.2 is dispensed with.

4. With the consent of and at the request of the learned counsel for the parties, this petition is disposed of at the stage of admission.

5. The challenge in this petition is to the order dated 17/12/2016 made by the learned Senior Civil Judge at Vasco (below Exhibit 50-D) permitting the respondent no.1 (plaintiff) to lead secondary evidence in respect of the documents specified in the application at (Exhibit 50-D). After having heard the learned counsel for the parties, I am satisfied that it is not necessary to interfere with the impugned order at this stage. However, it is necessary to clarify that the impugned order shall not be construed as restricting the petitioner's rights to not only cross examination of the plaintiff, plaintiff's witnesses as regards the documents in question, but also

to raise any further objections as are available under the law with regard to the production for tendering of the same. The evidenciary value of such documents is obviously left open to be determined by the learned trial Judge at the stage of final disposal of the suit. In addition to the aforesaid, it is clarified that in case the suit is ultimately decided against the petitioner and the petitioner chooses to institute an appeal against decree, the petitioner, will be entitled to challenge the impugned order dated 17/12/2016 in terms of Section 105 of the C.P.C. Accordingly, the contentions of both the parties as regards the validity of the impugned order are left open to be determined at the appropriate stage, if the occasion indeed arises for the same.

6. The petition is disposed of in the aforesaid terms. There shall be no order as to costs.

M. S. SONAK , J.

Ap/