

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.225 OF 2017**

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 Fragnance 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 no known)
Indian national, R/o H. No.
7/36, Salmona, Saligao,
Bardez-Goa.
2. Antonio Joao Bosco Lobo,
Son of (no 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

Mr. S. Vaishnav and Mr. G. Agni, Advocates for the petitioners.

Mr. Ryan Menezes, Advocate for the respondents.

Coram :- M. S. SONAK, J.

Date :- 10th April,, 2017

ORAL JUDGMENT :

Heard Mr. Vaishnav for the petitioners and Mr. Menezes for the respondents.

2. Rule. Rule is made returnable forthwith. With the consent of the learned Counsel for the parties, heard forthwith.

3. This petition challenges the orders, both dated

22/02/2017, made on applications at Exhibits 151 and 152.

4. By the order on application Exh.151, the learned Trial Judge has issued the following directions :

“(i) Leave granted to the plaintiffs to produce original documents secured under RTI, as prayed at exhibit 151.

(ii) The GCZMA authorities are directed to produce, before this Court, the entire file/s, from where they have issued copies of the documents to the parties in this litigation.

(iii) The GCZMA authorities are interalia directed to produce their inward and outward registers for the relevant period, for the perusal of the Court.

(iv) The Member Secretary, GCZMA shall appoint a senior, responsible and competent official to appear before this Court and depose before this Court, with respect to the contents of the relevant file/s and give his explanation about the multiple versions of the documents furnished to the Plaintiffs and Defendants. That summons will be issued after defence evidence is completed.”

5. Mr. Vaishnav, the learned Counsel for the petitioners submits that whilst powers of the Court under Section 165 of the Indian Evidence Act, are quite wide, such powers have to be used

sparingly and not for the purpose of assisting any party in its evidence. He submits that in this case, the respondents/ plaintiffs had not even applied for summoning any official of the Goa Coastal Zone Management Authority (GCZMA) to depose in the matter. Despite there being no request, the learned Trial Judge issued directions to this effect. He submits that the impugned order on application at Exh.151 is in excess of jurisdiction and, therefore, must be interfered with.

6. The impugned order is basically discretionary order. The learned Trial Judge has observed that the rival parties have produced different versions of one and the same documents. It is also observed that the position of the statutory authorities was not quite clear as to which of the documents present the correct picture. In these circumstances, it cannot be said that discretion has been unreasonably exercised. It is not the case of the Court assisting one party or the other. Courts are merely interested in unearthing all the true and correct facts to the extent possible. In a situation of this nature, it cannot be said that there is any jurisdictional error in invoking the provisions of Section 165 of the Indian Evidence Act. The impugned order, made on application at Exh.151, accordingly, warrants no interference.

7. The impugned order made on application at Exh.152 permits the respondents/ plaintiffs to lead evidence in rebuttal after the petitioners (contesting defendants) close their evidence. For this purpose, the learned Trial Judge has referred to the provisions contained under Order XVIII Rule 2(3) of C.P.C. If the provisions referred to by the learned Trial Judge, are perused, then, it would appear that the learned Trial Judge is not very accurate in analysing the scope and import of the said provisions. As a matter of general rule, the plaintiffs, who have begun the evidence, cannot insist upon the right to lead evidence in rebuttal. Only in certain well defined and exceptional circumstances, such leave can be granted. This does not appear to be one such exceptional or well defined case, where such leave could have been granted or ought to be granted.

8. The learned Trial Judge has basically relied upon the circumstance that the petitioners had applied for production of certain additional documents, which leave was granted by the Court. Therefore, the learned Trial Judge has reasoned that it will be the right of the respondents/ plaintiffs to lead evidence in rebuttal. It requires to be noticed that documents, in respect of which, leave came to be granted, were ones, which were produced during the course of cross-examination of the petitioners. The

cross-examination is yet to conclude. Therefore, whatever questions, which the respondents wish to pose in relation to said documents, the respondents, undoubtedly, have the opportunity to do so.

9. Further, since the order on application at Exh. 151 is being upheld, the issues in relation to all these documents will be writ large before the learned Trial Judge. In fact, the learned Trial Judge has, quite rightly, in the facts and circumstances of the present case, even summoned the official from GCZMA, to depose in relation to such documents. If, in relation to additional documents produced by the petitioners as well, it is necessary to pose some questions, it will be open to the respondents/ plaintiffs to do so. This will afford the respondents / plaintiffs sufficient protection. There is, however, no necessity to lead any evidence in rebuttal. Accordingly, the impugned order on application at Exh.152, is hereby set aside.

10. It is clarified that the observations in this order are only for the purposes of deciding the issues raised in this writ petition. Accordingly, such observations should not in any way reflect upon the merits of the rival contentions of the parties before the learned Trial Judge.

11. Rule is made partly absolute in this petition. The challenge in so far as the impugned order on application at Exh.151 is rejected. However, the challenge in so far as the order on application at Exh.152, is allowed in the aforesaid terms. There shall be no order as to costs.

12. All parties to act on the basis of authenticated copy of the order.

SMA

M. S. SONAK, J.