

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.322 OF 2017**

1. M/s Vicon Packaging Pvt.
Sehra Apts, CG-4, Mayfair Hotel,
Dr. Dada Vaidya Road, Panaji.
2. Shri Victor Gonsalves,
H. No.1057, Santana Cruz, Goa.
3. Shri Diago Barbosa,
H. No.196, Caranzalem, Goa
4. Mr. Victor Gonsalves (son)
H. No.1057, Santana Cruz, Goa .. Petitioners

Versus

1. EDC LTD formally known as
Economic Development
Corporation of Goa Daman
and Diu Limited, a Government
Company Registered under the
India Companies Act 1956, having
its registered office at EDC house,
Dr Atmaram Borkar Road,
Panaji Goa 403 001 Through
its Dy. General Manager
2. Shri Benjamin Gonsalves (expired)
R-4 strike office as LR. already
on record
3. Smt Ida Gonsalves,
(Since deceased through her legal
heirs)
 - i) Mr. Lucio Gonsalves (son)
 - ii) Succorina Gonsalves (daughter in law)
Both residing in U.K.
 - iii) Mrs. Pricsca (daughter)

iv) Rosa Judith Gonsalves (daughter in law)
Both residing at H.No.1057
Premeirio Bairro, St. Cruz, Ilha, Goa

v) Son : Mr. Hugo Gonsalves (son)

vi) Espy Gonsalves (Daughter-in-law)
Both residing at H.No.1057
Premeirio Bairro, St Cruz, Ilhas, Goa

vii) Mrs. Lacarda (daughter)

viii) Jose (son-in-law)
Both residing in Portugal

ix) Mrs. Maria (daughter)

x) Sebastiao (son-in-law)
both resident in UK.

xi) Daughter : Mrs. Aurea (daughter)

xii) Bernard (son-in-law)
Both having work address at TCP,
Panaji Goa

.. Respondents.

Mr. E. Dias, Advocate for the petitioners.

Mr. D. J. Pangam, Advocate for respondent no.1.

CORAM :- F. M. REIS, J.

DATE : 3rd April, 2017

ORAL JUDGMENT :

Heard Shri Dias, the learned Counsel appearing for
the petitioners and Shri Pangam, the learned Counsel appearing

for respondent no.1.

2. Rule. With the consent of the learned Counsel for the parties, rule is made returnable forthwith. The learned Counsel for respondent no.1 waives service.

3. The challenge in the above petition is to the order passed by the learned District Judge, dated 20/03/2017, whereby the evidence of the petitioners came to be closed.

4. Shri Dias, the learned Counsel for the petitioners submits that the matter was posted for the evidence of the petitioners for the first time after the evidence of the respondents was closed. It is further pointed out that on the relevant date, the petitioners had produced Medical Certificate, *inter alia*, disclosing that the witness of the petitioners was sick and as such, unable to attend the Court. The learned Counsel further points out that the learned Judge has misconstrued the certificate and disallowed the adjournment application on the ground that the witness was operated in May 2016. It is pointed out that the matter is now posted on 17/04/2017. The learned Counsel, as such, submits that in the interest of justice, the impugned order be set aside and the petitioners be allowed to

lead evidence.

5. Shri Pangam, the learned Counsel appearing for respondent no.1 submits that though the adjournment was sought for the first time, the matter has been adjourned from time to time and the recovery of the amount due to the respondents is being delayed on account of such adjournment. The learned Counsel further points out that in case this Court is inclined to exercise discretion in favour of the petitioners, the petitioners should not delay the proceedings before the learned District Court.

6. Considering the submissions made and having gone through the adjournment application of the petitioners dated 20/03/2017, which is stated to be for the first time, I am inclined to consider the relief sought by the petitioners. No doubt, the Medical Certificate shows that the witness was operated in May, 2016 and further there is an observation therein that the witness was advised rest on the said date on the ground of medical advice. In such circumstances, the learned Judge was not justified to pass the impugned order and refuse an adjournment to the petitioners. Hence, in the interest of justice, the adjournment application deserves to be granted and the

petitioners should be allowed to lead evidence in support of the stand taken before the learned District Court.

7. In view of the above, the following order is passed :

ORDER

- i) The impugned order dated 20/03/2017 is quashed and set aside.
- ii) The petitioners are allowed to lead evidence in support of their stand before the learned District Court and shall not unnecessarily delay the proceedings.
- iii) The petitioners shall ensure the presence of the witness on the next date and furnish an advance copy of the affidavit-in-evidence of the concerned witness at least two days in advance.
- iv) Rule is made absolute in the aforesaid terms.

F. M. REIS, J.

SMA