

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA
MISC. CIVIL APPLICATION NO. 650 OF 2017
IN
STAMP NUMBER MAIN NO. 2586 OF 2017

V M Salgaonkar Corporation Pvt Ltd	...Applicants
<i>Versus</i>	
Novex Communication Pvt Ltd	...Respondents

Mr Nitin Sardesai, Senior Advocate *with Mr. Vibhav Amonkar,*
Advocate, for the Applicant.
Mr Nikhil Pai, Advocate, *for the Respondent.*

CORAM: G.S. PATEL &
NUTAN D. SARDESSAI, JJ.
DATED: 16th August 2017

PC:-

1. The matter is almost fully covered by the Order dated 26th July 2017 in Commercial Appeal No. 1 of 2017.¹

2. It seems that Novex Communication, the Respondent, moved for substantially the same reliefs against four parties. Fomento was one, and the operators of the Marriott Hotel in Panaji were among the others. The suit itself was brought against V. M. Salgaonkar Bros. Pvt. Ltd. This is an error. It is the present Appellant, V. M. Salgaonkar Corporation Pvt. Ltd., that owns and operates the Marriott. There is a separate Misc Civil Application No. 650 of

¹ *Fomento Resorts and Hotels Ltd v Novex Communication Pvt Ltd.*

2017 for leave to Appeal, which we will, of course, immediately grant.

3. For the reasons set out in the *Fomento Resorts* order of 26th July 2017, we allow the present appeal as well. The impugned order dated 22nd June 2017 in SCS No. 6 of 2017 is quashed and set aside.

4. The learned Judge shall proceed to consider the application for interim relief filed by Novex in accordance with law after hearing both sides.

5. All the contentions of both the sides are expressly kept open.

6. In the meantime, a Commissioner appointed by the Trial Court has visited the Marriott hotel (and other properties). We should at this stage note that since there were four suits filed together, there are some typographical errors, but we will let that pass and proceed on a footing that the impugned order was directed against the present Appellant. The Commissioner so appointed visited *inter alia* the Appellants' Hotel and made a report. The Appellants question the appointment of the Commissioner but in our view the Trial Court was within its discretion to appoint a Commissioner. No exception can legitimately be taken to that part of the impugned order.

7. Having said that, we leave open the rights of the Appellants to file exceptions or objections to the Commissioner's report.

Parties will appear before the Trial Court on 29th August 2017. The Trial Court will fix a schedule for the filing of exceptions/objections, replies and rejoinders and for a final hearing of the application for interim relief. We request the Trial Court to dispose of the interim application, if possible, by 29th September 2017.

8. The Appeal is disposed of in these terms.

NUTAN D. SARDESSAI J.

G. S. PATEL J.