

Niti

**IN THE HIGH COURT OF BOMBAY AT GOA
COMMERCIAL APPEAL NO 2 OF 2017**

**HIGHSTREET CRUISES AND
ENTERTAINMENT PRIVATE
LIMITED,**

a Company Registered under the
Companies Act, 1956 through its Managing
Director Shri Ashish Kiranbhai Kapadia,
having their Registered Office at 108/109,
Bayside Mall, 2nd Floor, Opposite Sobo
Central Mall, Tardeo Road, Haji Ali,
Mumbai, Maharashtra 400 034.
Goa Office: C/o Delta Pleasure Cruise co.
Pvt Ltd, Fisheries Jetty, Ground Floor,
Fisheries Department Building DB Road,
Panaji, Goa 403 001

... APPELLANT

~ VERSUS ~

**NOVEX COMMUNICATION PRIVATE
LIMITED,**

A Company Registered under the
Companies Act, having their office at B 301,
Remi Biz Court, Plot No 9, Shah Industrial
Estate, Off Veera Desai Road, Andheri (W),
Mumbai – 400 053 through their
Authorized Representative Shri Suraj
Kumar, aged 28 years, authorized vide
Board Resolution dated 8th May 2017
And also at: A-302, Shalom Apartments, PO
Caranzalem, Behind Hotel Miramar, Goa
403 002.

... RESPONDENT

APPEARANCES

FOR THE APPELLANT	Shri Parag Rao, <i>Advocate</i>
FOR THE RESPONDENT	Shri Nikhil Pai & Ms Neha Kholkar, <i>Advocate</i>

**CORAM : G.S.Patel &
Nutan D. Sardesai, JJ.**

DATED : 22nd August 2017.

ORAL JUDGMENT (per G.S. Patel J)

1. Heard. Admit, returnable forthwith, and by consent taken up for hearing and final disposal.
2. The facts in this case are virtually identical to those in Commercial Appeal No 1 of 2017 (*Fometo Resorts and Hotels Ltd v Novex Communication Pvt Ltd*) and those in a Commercial Appeal numbered as Stamp Number Main No 2586 of 2017 (*V M Salgaonkar Corporation Pvt Ltd v Novex Communication Pvt Ltd*). For the reasons set out in the order of 26th July 2017 in *Fomento Resorts* and in *V M Salgaonkar* on 16th August 2017, we allow the present appeal. The impugned order dated 22nd June 2017 in Special Civil Suit No 8 of 2017 is quashed and set aside. The learned Judge is to consider the application for interim relief filed by the present Respondent in accordance with law after hearing both sides.

3. It is strenuously argued before us today that the order of the Trial Judge appointing a Commissioner is itself unlawful and vitiated. It is argued that in *Fomento Resorts* even that portion of the order was set aside but in our subsequent order in *V M Salgaonkar* we did not set aside the appointment of the Commissioner. On the contrary, we held that the Trial Court was within its discretion to appoint a Commissioner and that no exception could be taken to that limited portion of the order.

4. We reiterate our view of 16th August 2017 simply because no rights have been determined. It is not possible for the Trial Court to meaningfully apply its mind to an application for interim relief without having before it information about the music that is being played by the Appellant. These are matters specially within the knowledge of the Appellant. Novex Communication, the Plaintiff before the Trial Court, cannot be expected to have a completeness of such information. The Trial Court would be seriously handicapped in addressing the application for interim relief without some data. We do not think it is at all possible for the Appellant to argue that the application should be decided in the abstract or in a factual vacuum. Further we have in any case sufficiently safeguarded the rights of the Appellant in *V M Salgaonkar*, as we do here, leaving it open to them to file exceptions or objections to the Commissioner's report.

5. Parties will appear before the Trial Court on 29th August 2017. The Trial Court is requested to fix the schedule for the filing of exceptions and objections to the Commissioner's report, replies and rejoinders and for final hearing of the application for interim

relief. We request the Trial Court to dispose off the interim application at the earliest, and preferably by 29th September 2017.

6. The appeal is disposed off in these terms. The application for interim relief is infructuous and is disposed off accordingly.

NUTAN D. SARDESSAI J.

G. S. PATEL J.