

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.760 of 2010**

M/s. Goa Golf Club (Pvt.) Ltd.,
Having its registered office at
184-189,
Machado's Cove, Vainguinim,
Dona Paula- Goa.
Through its authorized representative,
Mr. Mahant R. Prabhugaonkar,
son of Mr. Ramakant Prabhugaonkar,
aged 54 years, married, Indian
National, resident of Dona Paula-Goa. .. Petitioner

Vs.

1. Trade Wings Hotels Limited,
Having its registered office at
6th Mascarenhas Building,
Mahatma Gandhi Road, Panaji-Goa
Through its Proprietor,
Dr. Shailendra P. Mittal,
Son of Parmeshwar Mittal,
Aged 51 years, married,
Resident of Mittal Bhavan,
62 A Peddar Road,
Mumbai 400 026.
2. M/S CP Entertainments
Partnership firm having
Office at Plot no 104/1A,
Opp Azad Bhawan, Porvorim,
Bardez, Goa Represented by
its partner, Ashok Khetrapal
Having Office at Plot no 104/1A,
Opp Azad Bhawan, Porvorim,
Bardez, Goa. .. Respondents.

Mr. Shivan Dessai, Advocate for the petitioners.

CORAM :- C. V. BHADANG, J.

DATE:- 16th January, 2018

ORAL JUDGMENT :

The challenge in this petition is to the order dated

11/11/2010, passed by the learned District Judge in Arbitration Application No.22/2010. By the impugned order, the learned District Judge has rejected application Exh.9 filed by the petitioner for impleadment of third party.

2. The brief facts are that the petitioner has filed the aforesaid Arbitration Application seeking interim measure under Section 9 of Arbitration and Conciliation Act, 1996 (the Act, for short). During the pendency of the said application, the petitioner sought impleadment of the respondent no.2 in view of the reply filed by the respondent no.1. Admittedly, the respondent no.2 is not a party to the Arbitration Agreement. The learned District Judge, placing reliance on the decision of the Kerala High Court in ***Shoney Sanil Vs. Coastal Foundations (P) Ltd and Ors***; AIR 2006 Kerala (206), has dismissed the application on the ground that a third party cannot be added as party to the proceedings.

3. Shri Dessai, the learned Counsel for the petitioner has placed reliance on the decision of this Court in the case of ***Girish Mulchand Mehta Vs. Mahesh Mehta***; 2010(1) BomCR 31, in order to submit that a person, who is not a party to the Arbitration Agreement, can, in an appropriate case, be allowed to be joined in an application under Section 9 of the Act.

4. None appears for the respondent.

5. I have considered the circumstances and the submissions made.

6. The Division Bench of this Court in the case of **Girish Mehta** (supra), has *inter alia*, held that although jurisdiction under Section 9 of the Act can be invoked only by a party to the Arbitration Agreement, the said section does not limit the jurisdiction of the Court to pass an order of interim measure only against a party to an Arbitration. The impugned order is based on the decision of the Kerala High Court in **Shoney Sanil** (supra). The said decision of Kerala High Court has been considered by the Division Bench in the case of **Girish Mehta** (supra). It can, thus, clearly be seen that in an appropriate case, the impleadment of a third party can be permitted in an application under Section 9 of the Act. In that view of the matter, the petition is allowed. The impugned order is hereby set aside. The application Exh.9 shall be considered by the learned District Judge on its own merits and in accordance with law.

7. Rule is made absolute in the aforesaid terms, with no order as to costs.

C. V. BHADANG, J.

SMA