

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NOS.1130 AND 1131 OF 2017.**

Far Pavilions Tours and Travels Pvt.
Ltd., Through its representative
Manuel Paully D'Souza .. Petitioner.

Vs

Pranab Kumar Pal .. Respondent.

Shri S. G. Dessai, Senior Advocate with Shri G. Teles, Advocate for
the petitioner.

Shri A. D. Bhobe, Advocate for the respondent.

CORAM :- C. V. BHADANG, J.

DATE: 3rd September, 2018

ORAL ORDER :

Heard the learned Counsel for the parties.

2. The petitioner has filed Civil Suit No.8/2011 against the respondent, while the respondent has filed Civil Suit No.19/2011 against the petitioner, in respect of the same subject matter. Both these suits are pending before the learned Senior Civil Judge, 'B' Court at Panaji.

3. The respondent filed an application (Exh.38-D) purportedly under Order XVIII, Rule 3 of CPC in Special Civil Suit

No.19/2011, *inter alia*, for a direction to the petitioner (the defendant in the said suit) to lead evidence on the issues, the burden of which is cast on the petitioner, prior to the respondent leading his evidence. The learned Trial Court has allowed the said application by an order dated 16/09/2017. The learned Trial Court has come to the conclusion that Special Civil Suit No.8/2011 being filed first in point of time and the issues framed therein being directly connected to the reliefs sought in the subsequent suit, it would be appropriate that the defendant in the said suit (petitioner) leads his evidence in Special Civil Suit No.8/2011. It is this order, which is the subject matter of challenge in the Writ Petition No.1131/2017.

4. The petitioner filed an application (Exh.40-D) purportedly under Section 151 of Civil Procedure Code in Special Civil Suit No.8/2011/B, filed by them, for consolidation of both the suits. The learned Trial Court, by an order dated 16/09/2017, has dismissed the said application, which order is subject matter of challenge in Writ Petition No.1130/2017.

5. On hearing the learned Counsel for the parties and on perusal of record, it appears that the second order, which is challenged in W.P.No.1130/2017, is in a sense based and is a

consequence of the order, which is the subject matter of challenge in W.P.No.1131/2017. The reasoning as articulated by the learned Trial Court while allowing the application Exh.38-D, cannot be accepted. It is not necessary to elaborate as I find that it would be appropriate if the learned Trial Court reconsiders both these applications on their own merits and in accordance with law. Hence, the following order :

ORDER

- 1) The petitions are allowed.
- 2) The orders, which are subject matter of challenge in both the Writ Petitions are set aside.
- 3) The application Exh. 40-D in Special Civil Suit No.8/2011/B and the application Exh.38-D in Special Civil Suit No.19/2011/B are restored to the file of the learned Trial Court, for deciding them afresh in accordance with law.
- 4) Rival contentions of the parties are left open.
- 5) The petitions are disposed of in the aforesaid terms, with no order as to costs.

C. V. BHADANG, J.

SMA