

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 27 OF 2019

ELLATH ENTERPRISES, REP. BY ITS
PROP., RUDRADEVAN ELLATH.,

... Petitioner

Versus

EARTH MOVERS, REP. BY ITS PROP.,
OLAVO ANTONIO DE SOUZA.,

... Respondent

Adv. Shailesh Redkar for the Petitioner.

Adv. Carlos Alvares Ferreira with Adv. Shane Gomes Pereira for
Respondent

Coram:- C. V. BHADANG, J.

Date:- 4th April 2019

Oral Order:

On hearing the learned counsel for parties, I am not inclined to interfere with the impugned order at this stage leaving it open to the petitioner to challenge the impugned order in an appeal, in case the final decree in the suit is adverse to the petitioner.

2. The petitioner is the original defendant, the respondent has filed a suit for recovery of money which comprise of the lease charges for use of a Toyo pump (a pump used for excavating sand from the sea bed) by the respondent to the petitioner. The petitioner obtained the said pump on lease from the respondent in order to comply with the obligation in respect of a contract with the Dredging Corporation of India Limited (DCI). The case

made out by the respondent is that inspite of the fact that the pump was taken on lease, the petitioner failed to pay the charges.

3. In para 12 of the written statement, a case is made out by the petitioner that the Toyo pump was not suitable for the job in hand as the capacity of the pump was having "strainer of 60 m.m., which was lesser than the capacity which was undertaken by the petitioner for removal of the spuds from the sea" as per the contract with DCI.

4. The petitioner wanted to examine the Project Manager of the DCI to show that the pump was not suitable for this purpose. Admittedly the list of the witnesses is not filed by the petitioner setting out the name of the said Project Manager as the witness he intends to examine. This is one of the reasons why the trial court has refused to grant the application for calling the said witness to be examined on behalf of the petitioner. Secondly the trial court has found that the evidence of the witness is not relevant, as the termination of the contract by the DCI with the petitioner is not an issue in the suit.

5. As I am inclined to keep this issue open for being challenged in an appeal, as indicated earlier, it would neither be necessary nor appropriate to express any binding and final opinion . However, prima facie, it appears that the suit is simplicitor for

recovery of the charges for which the Toyo pump was used by the petitioner and the failure of the pump to comply with the capacity undertaken by the petitioner in a contract with the DCI is not a matter in issue. Thus subject to the liberty as mentioned earlier, the petition is disposed off with no order as to costs.

C. V. BHADANG, J.

ap/-