

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 393 OF 2019

Idalina Preciosa D'Souza. Petitioner.
Versus
Inacinho Celestino do Pinto e Sa
and others. Respondents.

Mr. Rohit Bras de Sa, Advocate for the Petitioner.

Mr. A. D. Bhobe, Advocate for Respondent No.1.

Ms. Yadika Mandrekar, Advocate for Respondents No.3 and 4.

Mr. D. J. Pangam, Advocate General with Ms. Ankita Kamat,
Additional Govt. Advocate for Respondent No.6.

CORAM : PRADEEP NANDRAJOG, CJ.,
M.S. SONAK, J.

OCTOBER 11, 2019

P.C.:-

With the promulgation of the Commercial Courts Act, 2015, the commercial disputes pending in Civil Courts had to be transferred to Commercial Courts. In each State by a Notification the Commercial Courts were constituted. Pending suits had to be transferred to Commercial Courts if the dispute was a commercial dispute.

2. Thus, each Civil Court had to apprise the nature of the dispute and on returning a finding that the dispute was a commercial

dispute, the suit had to be transferred to the Commercial Court. This necessitates a judicial application of mind by a Judge and not by an administrative decision of a clerk or a ministerial employee attached to the Court.

3. The grievance in this Petition is that *sans* a judicial order, at the direction of the ministerial staff of the Courts in the State of Goa suits were transferred to Commercial Courts without any application of mind on the question whether the dispute was a commercial dispute.

4. We dispose of the Petition declaring that no pending suits before a Civil Judge shall be transferred to a Commercial Court save and except after the Judge has applied his mind to the dispute and upon finding recorded in the order that the dispute is a commercial dispute.

5. Suits which have been sent to the Commercial Court *sans* judicial order would be apprised by the Commercial Courts to determine whether the dispute is a commercial dispute. If it is held and so recorded in the order that the dispute is a commercial dispute, the suit will be retained. If it is found that the dispute is not a commercial dispute, the suit shall be returned to the Civil Court.

M.S. SONAK, J.

CHIEF JUSTICE.