

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 532 OF 2012**

1. Dr. Ajit B. Kerkar, s/o Mr. Baburao Kerkar, aged 79 years, Indian National, r/at 11, Navroji Mansion, 32, Woodhouse Road, Mumbai - 05, through his duly constituted Attorney Mr. John Buckenham, aged 39 years, Indian National, r/o of Calangute, Bardez, Goa.
2. Tulip Hotels Pvt. Ltd., a Company incorporated under the Companies Act, 1956 and having its Registered Office at Basement, Chandramukhi Bldg., Nariman Point, Mumbai - 21, through its authorized representative, Mr. John Buckenham, aged 39 years, r/o of Calangute, Bardez, Goa.

.... Petitioners

Versus

1. Dr. Shailendra P. Mittal, s/o Mr. Parmeshwar Mittal, aged 58 years, Indian National, R/at Mittal Bhawan, 62-A, Peddar Road, Mumbai - 26, through his Constituted Attorney Mr. Valigno Dias, s/o Mr. Santan Dias, aged 38 years, r/at H. No. 1, Opp. Laxmi Petroleum Pump, Mundvel, Vasco-da-Gama, Goa 403 802.
2. Trade Wings Ltd., a Company incorporated under the Companies Act, 1956, having its registered office at 6, Mascarenhas Bldg., Mahatma Gandhi Road, Panaji, Goa, 403 001, through its Authorized representative Mr. Valigno Dias, s/o Mr. Santan Dias, aged 38 years, r/at H. No. 1, Opp. Laxmi Petroleum Pump, Mundvel, Vasco-da-Gama, Goa 403 802.
3. Trade Wings Hotels Ltd., a Company incorporated under the Companies Act 1 of 1956 and having its corporate office at 18/20 K. Dubash Marg, Kalaghoda, Fort, Mumbai-23 and having its

registered office at 6, Mascarenhas Bldg., Mahatma Gandhi Road, Panaji, Goa, 403 001, through its Authorized representative Mr. Valigno Dias, s/o Mr. Santan Dias, aged 38 years, r/at H. No. 1, Opp. Laxmi Petroleum Pump, Mundvel, Vasco-da-Gama, Goa 403 802.

4. Tulip Star Leisure & Health Resorts Ltd., a Company incorporated under the Companies Act, 1956 and having its registered office at Basement, Chandramukhi Bldg., Nariman Point, Mumbai-21.
5. Mr. Vasant Ramarao Agnihotri, s/o Ramarao Agnihotri, aged 75 years, Indian National, r/at Plot No. 70-L, Behind S.B.I., Dayanand Saraswati Marg, Chembur, Mumbai - 71.
6. Mr. Sudhanshu P. Purohit, s/o Mr. Purshottam Purohit, aged 49 years, Indian National, r/at Flat No. 201, 2nd Floor, Sovereign Apts., Hiranandani Gardens, Powai, Mumbai - 76.
7. Bopana Dwarkanath, son of Dwarkanath, r/o Jubilee Hills, Hyderabad, Andhra Pradesh. Respondents

Mr. Parag Rao, Advocate for the Petitioners.

CORAM : C.V. BHADANG, J.

DATE : 24th June, 2019

ORAL JUDGMENT:

On 20.07.2012, the petitioners (defendant nos. 1 and 2) had sought "reasonable time" for filing written statement, which was refused by the learned Trial Court by the impugned order dated 20.07.2012. The refusal to grant such time in the year 2012, has resulted into a delay of about seven years in the trial of the suit.

2. The respondent nos. 1, 2 and 3 have filed Special Civil Suit No. 7/2007/A, against the petitioners and the respondent nos. 4 to 7, for declaration and for recovery of money. The petitioners appeared in the suit on 14.02.2007 and sought to file written statement and simultaneously filed an application under Section 8 of the Arbitration and Conciliation Act, 1996 (Act, for short), as there was an arbitration clause in the share holders agreement between the parties. The petitioners thus, prayed for referring the dispute to arbitration. The said application was dismissed by the learned Trial Court on 23.05.2012 and the suit was adjourned to 13.06.2012, for filing written statement. On 13.06.2012, the Presiding Officer was on leave and hence, the suit came to be adjourned to 22.06.2012. On that day, the petitioners, again sought time to file written statement on the ground that they intended to challenge the order dated 23.05.2012, before this Court and according to the petitioners, the filing of the written statement, may come in their way in prosecuting the said challenge. The learned Trial Court extended the period to file the written statement till 06.07.2012.

3. It appears that in the meantime, the petitioners challenged the order dated 23.05.2012, before this Court in

Civil Revision Application No. 35/2012. This Court by an order dated 06.07.2012 (while refusing to grant a blanket stay of the suit), observed that the Trial Court may extend the time by a period of two weeks, for filing the written statement. In pursuance of the said order, the learned Trial Court further extended the time by a period of two weeks. Thereafter, the petitioners filed yet another application on 20.07.2012, seeking “reasonable time” to file the written statement, which has been dismissed by the learned Trial Court on the ground that this Court on 06.07.2012 had concluded that no case was made out for grant of blanket stay and secondly, on the ground that the suit was more than five years old.

4. I have heard Mr. Rao, the learned Counsel for the petitioners. None appears for the respondents.

5. The record discloses that since last several dates, there is no appearance on behalf of the respondents. On 15.04.2019, after noticing the absence of the respondents, this Court had granted last and final opportunity to the absentee respondents stipulating that in the event, the respondents do not remain present, the matter shall be proceeded in their absence. Today also, there is no appearance on behalf of the

respondents. As such, the petition is being disposed off after hearing the learned Counsel for the petitioners.

6. One of the grounds, which has weighed with the learned Trial Court, while rejecting the application, is that this Court had found that there was no reason for grant of blanket stay. That was only an interim order passed on 06.07.2012 and the perusal of the said order shows that at that stage, this Court had found that there was no need to grant a blanket stay. It does appear that the petitioners were pursuing their application under Section 8 of the Act, before the Trial Court and thereafter, before this Court. Eventually, the Revision Application was dismissed and the matter was carried to the Hon'ble Supreme Court, where the order of dismissal was confirmed. Be that as it may, I find that the application could not have been dismissed, on the ground that this Court had found that there was no case made out for the grant of a blanket stay. The record of this case brings out another relevant feature. The application under Section 8 of the Act was filed by the petitioners on 14.02.2007 and that was decided on 23.05.2012. Thus, the petitioners alone, cannot strictly be held responsible for the suit remaining pending for more than five years. In that view of the matter, the petition is allowed.

Necessary
correction carried
out in terms of
Order dated
12.07.2019, passed
in MCA No.
661/2019

and the respondent no. 7 (the original defendant no. 4)
The impugned order is hereby set aside. The petitioners / are
permitted to file the written statement, within a period of three
weeks from today. Rule is made absolute in the aforesaid terms,
with no order as to costs.

C. V. BHADANG, J.

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