

IN THE HIGH COURT OF BOMBAY AT GOA
COMMERCIAL APPEAL NO. 9 OF 2019

VALENCIA ASSET MANAGEMENT LTD.,
Office at 20, Reid Street, 3rd Floor, William House,
Hamilton HM 11, Bermuda, Through its Director,
Mr. Manish Salva, S/o. Gangji D. Savla,
Non Resident Indian, R/o. Flat No.4, Lorne Court,
Whitehall Road, Harrow HA1 3BH, United Kingdom ... Appellant

Versus

AQUAMARINE RESORTS PVT. LTD.
Vaswani Gardens, 25 Sobam Road, Cuffe Parade,
Colaba, Mumbai – 400 005 ... Respondent

Mr. Gaurav Gupta and Mr. Omar Hoda, Advocates for the appellant.
Mr. Ashish Gatagat and Mr. Anirudh Salkar, Advocates for the respondent.

**Coram:- M. S. SONAK &
NUTAN D. SARDESSAI, JJ.**

Date:- 11th November, 2019

ORAL JUDGMENT : (Per M.S. Sonak,J)

Heard Mr. G. Gupta and Mr. Omar Hoda, learned Advocates for the appellant and Mr. Ashish Gatagat with Mr. A. Salkar, learned Advocates for the respondent.

2. Admit. With the consent of and at the request of the learned Counsel for the parties this appeal is taken up for final disposal forthwith.

3. Challenge in this appeal is to the order dated 07/06/2019 by which the learned Trial Judge has dismissed the appellant's/ plaintiff's Special Civil Suit (Comm) No.7 of 2018 for non-compliance with the order dated 17/11/2018,

by which the appellants/ plaintiff was directed to delete the name of the defendant No.2 from the array of the parties.

4. The record indicates that the appellant / plaintiff did attempt to comply with the order dated 17/11/2018 by seeking leave to place on record an amended plaint without the name of defendant No.2. However, the learned Trial Judge quite correctly required the appellant/plaintiff to carry out the amendment on the original plaint by striking off the name of defendant No.2 and indicate that this striking off is in pursuance of the order dated 17/11/2018.

5. The record indicates that this position was made clear to the appellant but despite the same, the amendment / deletion in the aforesaid manner was not carried out. Hence, the impugned order dated 17/06/2019 dismissing the suit.

6. According to us, the order of dismissal of the suit for the aforesaid reason is quite harsh in the facts and circumstances of the present case. No doubt, the valuable time has been lost in the meanwhile. No doubt commercial suits are required to be disposed off expeditiously. Therefore, considering all these aspects, we are inclined to set aside the impugned order dated 07/06/2019, particularly since the appellant, through its learned Counsel, has offered to pay the respondent herein costs of ₹1,00,000/- (Rupees One Lakh only) within a period of four weeks from today.

7. Further, the learned Counsel for the appellant states that the amendment as directed by the order dated 17/11/2018 will be carried out

within two weeks from the date of payment of the costs, in the manner indicated and in accordance with law, without fail.

8. The impugned order is therefore set aside subject to the appellant paying to the respondent costs of ₹1,00,000/- (Rupees One Lakh only) within four weeks from today. In case there is any difficulty in payment of costs to the respondent, the appellant is at liberty to deposit such costs before the learned Trial Judge within four weeks from today. Upon deposit, liberty is granted to the respondent to withdraw the same.

9. If the costs are deposited within four weeks from today the impugned order shall stand set aside and the Commercial Suit and Special Civil Suit (Comm) No.7 of 2018 shall stand restored to the file of the learned Trial Judge. The parties / their Advocates to then appeal before the Trial Judge on 07/01/2020 at 10.00am.

10. Further, it is made clear that if the costs are deposited within four weeks from today, the learned Trial Judge to permit the appellant to carry out the amendment in terms of the order dated 17/11/2018.

11. It is further made clear that nothing of this order is intended to affect the rights of the parties who seek the amendment of their pleadings. Such application, if made, to be considered on its own merits and in accordance with law.

12. The appeal is disposed of in the aforesaid terms.

13. The Civil Application No.919 of 2019 does not survive and stands disposed of.

14. The parties are permitted to act on the basis of the authenticated copy of this order. However, certified copy of the order of this Court should eventually to be placed on the file of the learned Trial Judge.

NUTAN D. SARDESSAI, J.

M. S. SONAK, J.

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