

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 1030 OF 2016**

E CONNECT SOLUTIONS PVT. LTD.,
THR. ITS AUTH. REP., PRASHANT
KUMAR AWASTHI.

... Petitioner

Versus

INFO TECH CORPORATION OF GOA LTD.,
THR. ITS MANAGING DIRECTOR.

... Respondent

Mr. S. S. Kantak, Senior Advocate with Mr. Abhijeet Kamat, Advocate
for the Petitioner.

Mr. Deep D. Shirodkar, Addl. Government Advocate for the
Respondent.

**Coram:- M. S. SONAK &
NUTAN D. SARDESSAI, JJ.
Date:- 23rd September, 2019**

P.C.

Heard Mr. S. S. Kantak, learned Senior Advocate with
Mr. A. Kamat for the Petitioner and Mr. D. Shirodkar, learned Addl.
Government Advocate for the Respondent.

2. The Petitioner, by instituting this petition, seeks the
following substantive reliefs :

*“A. Issue a writ of Mandamus or a writ in the nature of
mandamus commanding the Respondent to either
forthwith to execute a contract with the Petitioner for
implementation of the Human Resource Management
System (HRMS) project for the State of Goa at the*

tendered rate of Rs.6,75,00,000/- plus escalation or in the alternative to pay to the Petitioner the amount due as per the figures submitted by the Petitioner.

AA. This Hon'ble Court be pleased to appoint, as a Commissioner, a person well versed in the field of Information Technology to assess and verify the amount of work completed by the Petitioner pursuant to the "Award of Contract" dated 04/03/2014 by the Respondent and submit a report to this Hon'ble Court.

B. Such other and further orders as this Hon'ble Court deems fit in the circumstances of the case.

BB. Writ of mandamus or any other writ, order or direction in the nature of mandamus directing the Respondent to evaluate the work carried out by the Petitioner and make the said payment to the Petitioner at the earliest."

3. Several orders were made in this petition and this petition was adjourned from time to time basically to find out whether the parties were agreeable to get their dispute resolved by arbitration. However, it is only on 23.07.2019 that Mr. Pangam, learned Advocate General appearing for the Respondent made a statement that the Respondent was not agreeable for reference of this matter to arbitration.

4. Thereafter, the Petitioner amended the petition to seek a mandamus directing the Respondent to evaluate the work carried out by them and make the payment towards the completed work at the earliest.

5. On behalf of the Respondent, the objections were raised to the maintainability of this petition on the ground that the same

involves the disputed question of fact which may not be conveniently gone into in exercise of our writ jurisdiction.

6. According to us, looking to the disputes between the parties, it is apparent that the adjudication into the disputed question of fact will be involved. Therefore, we are inclined to uphold the preliminary objections raised on behalf of the Respondent, the maintainability of this petition, as according to us, the issue raised in this petition can best be adjudicated by the Petitioner instituting a civil suit before the appropriate Court so that the proper evidence can be led by both sides.

7. On behalf of the Petitioner, it is pointed out that the cause of action will really arise once there was firm rejection on the part of the Respondent for appointment of Arbitrator. In any case, it is pointed out that the Petitioner was bonafide pursuing this matter before this Court and therefore, this Court may make some observations on the issue of applicability of Section 14 of the Limitation Act, consistent with the observations made by the Hon'ble Apex Court in the case of *Rameshwarlal Vs Municipal Council, Tonk and others*¹.

8. In this case, we were quite satisfied that the Petitioner was bonafide pursuing this matter before us. The record would indicate that we made several orders in this matter adjourning the petition from time

¹(1996) 6 SCC 100.

to time basically to see whether the parties would go for arbitration. Accordingly, we are *prima facie* satisfied that the Petitioner will be entitled to exclusion of the period spent before this Court, should any issue of limitation at all arise in the suit which the Petitioner states that it will institute before the appropriate Court within two months from today.

9. In somewhat similar circumstances, the Hon'ble Apex Court in the case of *Rameshwarlal* (supra) made the following observations :

“1. *The petitioner claims that he has been denied salary for the period from 10.09.1987 to 18.08.1988. He claims to have worked in the office of the Municipal Council, Tonk. He filed writ petition in the High Court in February 1990. The learned Single Judge held that since it is a claim recoverable in a civil action, the discretionary power under Article 226 of the Constitution is not exercisable. Accordingly, he dismissed the writ petition. The same came to be confirmed in the impugned order of the Division Bench made on 6.5.1996 in Special Appeal No.218 of 1996. Thus, this special leave petition.*

2. *It is not necessary for us to go into the question of the legality of the order of the High Court in refusing to grant the relief. It is axiomatic that the exercise of the power under Article 226 being discretionary, the learned Single Judge as well as the Division Bench have not exercised the same to direct the respondent to pay the alleged arrears of salary alleged to be due and payable to the petitioner. Under these circumstances, the only remedy open to the petitioner is to avail of the action in the suit. Since the limitation has run out to file a civil suit by now, which was not so on the date of the filing of the writ petition, the civil Court*

is required to exclude, under Section 14 of the Limitation Act, 1963, the entire time taken by the High Court in disposing of the matter from the date of the institution of the writ petition.

3. Normally for application of Section 14, the Court dealing with the matter in the first instance, which is the subject of the issue in the later case, must be found to have lack of jurisdiction or other cause of like nature to entertain the matter. However, since the High Court expressly declined to grant relief relegating the petitioner to a suit in civil Court, the petitioner cannot be left remediless. Accordingly, the time taken in prosecuting the proceedings before the High Court and this Court, obviously pursued diligently and bona fide, needs to be excluded. The petitioner is permitted to issue notice to the Municipality within four weeks from today. After expiry thereof, he could file suit within two months thereafter. The trial Court would consider and dispose of the matter in accordance with law on merits.

4. The special leave petition is disposed of accordingly.”

(Emphasis supplied)

10. Applying the aforesaid principles to the facts of the present case, we make it clear that if any suit is indeed instituted by the Petitioner within two months from today, then the learned Trial Judge, will take into the consideration the fact that the period spent by the Petitioner in instituting the present petition was the period which was spent bonafide by them in pursuing its claim. This is evident from the various orders made in this matter from time to time. The learned Trial Court will therefore consider the grant of benefits of the provisions of Section 14 of the Limitation Act to the Petitioner consistent with the

view taken by the Hon'ble Apex Court in the case of *Rameshwarlal* (supra) by excluding the time spent by the Petitioner in prosecuting this Petition. No doubt, for this purpose, the Petitioner, if so advised, will have to take out appropriate application seeking for exclusion of the period. Such application, if taken out, to be considered in the light of the observations made herein, as also the observations made in *Rameshwarlal* (supra).

11. With the aforesaid liberty and directions, we dispose of this petition.

12. We make it clear that we have not examined the rival contentions on merits, since, according to us, such examination would involve adjudication in highly disputed question of fact. We have not entertained the present petition on the aforesaid ground and because we are satisfied that the Petitioner has alternate and efficacious remedy of instituting a civil suit in the matter.

13. The petition is disposed of in the aforesaid terms. There shall be no order as to costs.

14. All concerned to act on the basis of the authenticated copy of this order.

NUTAN D. SARDESSAI, J.
at*

M. S. SONAK, J.