

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.834 OF 2019

Ashwin Holdings Pvt. Ltd.
having its registered Office at
L-41, Connaught Circur-
New Delhi, through its authorized
Representative Mr. Ranjit Kumar
Chowdhury, major, son of late Ltd.
Col. Romendra Nath Chowdhury,
R/o. Block I, Flat No.101, Devashri
Gardens, Alto Porvorim, Bardez, Goa. Petitioner.

Versus

1. Anthony Fernandes,
son of late Alex Fernandes, through his
power of attorney holder, Mrs. Rosa
Conceicao Fernandes, resident of
Khobrawado, Calangute, Bardez, Goa.
2. Village Panchayat of Calangute,
through its Sarpanch,
having office at P.O. Calangute,
Bardez, Goa.
3. Block Development Officer,
Government of Goa,
Mapusa, Bardez, Goa.
4. Goa Coastal Zone
Management Authority,
through its Members Secretary,
Department of Science, Technology
and Environment, Saligao, Bardez, Goa.
5. Town and Country Planning

Department, through the Town Planner,
North Goa, Mapusa, Bardez, Goa.

6. Directorate of Panchayats,
through the Deputy Director of Panchayats,
North Goa, Panaji, Goa.

7. State of Goa,
through the Chief Secretary,
having Office at
Secretariat, Porvorim, Goa.

..... Respondents.

Mr. Shivan Desai, Advocate for the Petitioner.

Mr. Kewal Sawant, Advocate for Respondent No.1.

Mr. Tukaram Gawas, Addl. Govt. Advocate for Respondents No.3, 4,
5, 6, and 7.

Coram: M.S. Sonak, J.

Dated: 16th June 2021.

ORAL JUDGMENT:-

Heard the learned Counsel for the parties.

2. Rule. The rule is made returnable forthwith with the consent of and at the request of the learned Counsel for the parties.

3. The Petitioner challenges the order dated 9th September 2019 (impugned order) made by the District Judge, North Goa at Panaji (learned Trial Judge), dismissing the application for production

of documents.

4. The Petitioner is the original Plaintiff and the Respondents are the original Defendants in Civil Suit No. 61/2010, instituted before the Trial Court seeking several reliefs. This suit was instituted and verified by one Ranjit Kumar Chowdhury, who was described in the cause title to the plaint as '*authorized representative*' of the Plaintiff Company.

5. Respondent No.1 (Defendant No.1), who is the main contesting Defendant, filed his written statement on 12/12/2010. In paragraph (b), Defendant No.1 specifically questioned the authority of Ranjit Kumar Chowdhury to file the suit by contending that Ranjit Kumar Chowdhury had no authority to file the suit.

6. Despite the aforesaid, Plaintiff took no steps to establish the authority of Ranjit Kumar Chowdhury to file and pursue the suit. This was on the specious plea that the issues which were cast on 24th March 2011, did not raise any specific issue regards the authority of Ranjit Kumar Chowdhury to institute or pursue the suit.

7. In the course of the trial, on 21/12/2017, Ranjit Kumar Chowdhury admitted that there was no specific clause in the resolution marked Exhibit 82 authorizing him to file a suit or to depose in the suit. He also admitted that since Plaintiff is a

Company, everything has to be done by passing a resolution. On 5th March 2018, to which date the cross-examination of Ranjit Kumar Chowdhury continued, he admitted that he was not the Director of the Plaintiff Company, but only the authorized signatory of the Plaintiff Company. He admitted that there was a mistake in the affidavit which had styled him as director of the Company. To the pointed cross-examination as to whether he had any authority to institute the suit, Mr. Chowdhury mostly denied knowledge.

8. On 17/8/2019, Plaintiff applied to the Court for framing additional issue since, at the stage of final hearing of the suit, Defendant No.1 naturally raised the contention that the suit was not maintainable because, Ranjit Kumar Chowdhury had no authority to either institute the suit, or pursue the same. In the application, Plaintiff acknowledged that such an objection was raised by Defendant No.1 at the earliest opportunity i.e. in the written statement.

9. The Trial Court allowed framing of such issue as prayed for by Plaintiff. Thereafter, on 26/8/2019, Plaintiff applied for production of resolution dated 17/8/2019 on record. The resolution purported to ratify the actions of Ranjit Kumar Chowdhury in the suit and further expressly authorized him to pursue the suit. Defendant No.1 opposed the said application by filing a reply dated 31/8/2019. By the impugned order dated 19/9/2019, the learned

Trial Judge has dismissed the said application. Hence, the present Petition.

10. Mr. Desai, the learned Counsel for the Petitioner submits that the defect of nature pointed out by Defendant No.1 can be remedied at any stage of the proceedings. He submitted that the resolution was already placed on record. However, by way of abundant caution, a fresh resolution dated 17/8/2019 was adopted by the Plaintiff Company, and leave was applied to place the same on record. The application should have been allowed in the normal course considering the law laid down by the Hon'ble Supreme Court in *M.M.T.C. Ltd. and another vs. MEDCHL Chemicals and Pharma (P) Ltd. and another*¹ and *United Bank of India vs. Naresh Kumar and ors.*². He submitted that no prejudice whatsoever will occasion to the Respondents and the prejudice, if any, could have always been compensated by costs. On instructions, he submits that the Petitioner offers to pay costs of ₹ 50,000/- to Defendant No.1 if leave is granted to the Petitioner to produce the additional documents.

11. Mr. K. Sawant, learned Counsel for Respondent No.1 submits that the Petitioner has been completely lax in pursuing the suit. He points out that the objection was raised way back in the year 2010 and it is only after 9 years that some resolution is purported to

¹ (2002) 1 SCC 234

² (1996) 6 SCC 660

have been passed to authorize Ranjit Kumar Chowdhury. He submits that such a resolution is not genuine and using such a resolution, the defects which go to the root of the matter can never be remedied. He submits that Defendant No.1 is a poor *mundkar*, who is being harassed for the last 10 years by the Petitioner which has purchased a neighboring plot and put up commercial establishments therein. He submits that there is no error in the impugned order and the extraordinary jurisdiction may not be exercised in favor of the Petitioner.

12. Mr. T. Gawas, learned Counsel for Respondents No.3 to 7 left the matter to the discretion of the Court.

13. Rival contentions now fall for determination.

14. Though, there is merit in the contention of Mr. Sawant that no steps were taken by the Petitioner to remedy the defects pointed out by Respondent No.1 way back in the year 2010, the question is whether leave should be rejected to produce the resolution which now purports to ratify the action of Ranjit Kumar Chowdhury and confer upon him, maybe *ex post facto* authority to institute the suit and pursue the suit. No doubt, all this will occasion some prejudice to Respondent No.1 but, this is a prejudice that can be compensated in terms of costs.

15. The decisions relied upon by Mr. Desai do suggest that the

parties should not be non-suited on account of such technicalities and, further, the Courts should be liberal in permitting the parties to rectify such defects even though the rectifications may have been applied for belatedly. This is not a case where some backdated resolution is attempted to be produced. The resolution is dated 17/8/2019 which purports to ratify the authority of Ranjit Kumar Chowdhury and the acts undertaken by him earlier concerning the suit.

16. Having regard to the law laid down by the Hon'ble Supreme Court, the application made by the Petitioner for leave to produce additional documents ought to have been allowed. No doubt, substantial costs could have been imposed on the Petitioner having regard to the prejudice suffered by Respondent No.1. Now that the Petitioner has offered to pay costs of ₹ 50,000/- to Respondent No.1, prejudice to Respondent No.1, to a great extent, can be mitigated.

17. This Petition is, therefore, disposed of by making the following order :

(a) The impugned order dated 09/09/2019 is, hereby, set aside and the Petitioner's application dated 26/08/2019 for production of additional documents is, hereby, allowed.

(b) The aforesaid is subject to the Petitioner paying costs of ₹ 50,000 to Respondent No.1 on or before 7th July 2021. In case there is any

difficulty in making the payment, the Petitioner can deposit the costs before the Trial Court on or before 7th July 2021.

(c) If the costs as aforesaid, are indeed paid or deposited before 7th July 2021, the parties to appear before the Trial Court on 12th July 2021 at 10.00 a.m. and file an authenticated copy of this order.

(d) The Trial Court to then permit Respondent No.1 to withdraw the costs unconditionally.

(e) If there is failure to pay or deposit the costs, then, this Appeal shall be deemed to have been dismissed with costs of ₹ 25000 which can be recovered by Respondent no. 1 in execution.

18. All concerned to act based on an authenticated copy of this order.

M.S. Sonak, J.

SANTOSH S MHAMAL Digitally signed by SANTOSH S MHAMAL
Date: 2021.06.18 12:14:01 +05'30'