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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.23 OF 2019

COASTAL BUILDERS, REP.
BY ITS PROP., VISHWAS
DESSAI AND ANR.

....PETITIONERS

Versus

BHARAT DEVELOPERS
AND REALTORS PVT. LTD.,
REP. BY ITS DIRECTOR,
PRADIP SINGH BIRRING.

....RESPONDENT

Mr C.A. Ferreira, Mr Nehal Govekar and Mr S. Kamulkar,
Advocates for the Petitioners.

Mr S.G. Desai, Senior Advocate, with Mr Pavithran A.V.,
Advocate for the Respondent.

CORAM : M. S. SONAK, J.

DATE : 23rd FEBRUARY 2023

ORAL ORDER :

1. Heard Mr C.A. Ferreira learned Counsel for the petitioners and Mr S.G. Desai, learned Senior Advocate, who appears along with Mr Pavithran A.V. for the respondent.

2. After Mr Ferreira concluded his submissions, Mr Desai, learned Senior Advocate for the respondent, submitted that under the Notification dated 03.11.2016, issued under Section 3 of the

Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (the said Act), the Government of Goa had constituted the Court of District Judge – 1, South Goa at Margao, to be the Commercial Court for the District of South Goa. He, therefore, submitted that the impugned orders dated 03.07.2018 and 03.11.2018, made by the Principal District Judge, South Goa at Margao, were without jurisdiction.

3. Mr Desai, without prejudice to his contention that on merits, the petitioner was not entitled to file any written statement, submitted that the impugned orders could be set aside and the competent Commercial Court could be directed to decide the issue as to whether any additional time could be granted to the petitioner to file a written statement in the matter. In the alternate, he submitted that the impugned orders could be set aside and the matter remanded to the Principal District Judge, South Goa, to decide whether he had the jurisdiction to function as a Commercial Court given the Notification dated 03.11.2016.

4. Mr Dessai offered that if the Principal District Judge concluded that he has jurisdiction, then the further issue of whether time should be granted to the petitioners to file a written statement could also be decided by the Principal District Judge, subject to the right of the respondent to challenge such an assumption of jurisdiction. If, however, the Principal District Judge were to conclude that the matter

was required to be made over to the District Judge – 1, or any other competent Commercial Court, then the issue of whether the petitioners should be allowed to file a written statement or such right stands forfeited could be decided by such competent Commercial Court. Mr Desai also submitted that all parties' contentions may be kept open.

5. Mr C.A. Ferreira, without prejudice to his contention that the impugned orders were vulnerable on merits, submitted that the petitioner would have no difficulties in adopting the above course of action suggested by the learned Senior Advocate for the respondent.

6. Accordingly, with consent, the impugned orders dated 03.07.2018 and 03.11.2018 are quashed and set aside. However, the matter is remanded to the Principal District Judge, South Goa, to consider, *inter alia*, the following issues:

(a) In light of Notifications dated 03.11.2016 and 05.05.2020, which is the competent Commercial Court to try Special Civil Suit (Commercial) No.3/2018?

(b) Depending on the decision on (a) above, whether on merits, the petitioner is entitled to additional time to file a written statement or such right stands forfeited given the several decisions both parties rely on.

(c) If the Principal District Judge decides that the competent Commercial Court is some other Court

other than Principal District Judge, then the Principal District Judge to make over/transfer the proceedings in Special Civil Suit (Commercial) No.3/2018 to such Commercial Court which shall then decide whether the petitioner should be granted some reasonable time to file the written statement or whether such right should stand forfeited given the several decisions relied upon by the learned Counsel for the parties.

(d) The two Counsels propose that for deciding the issue of the competent Commercial Court, cognizance should be taken of not only the provisions of the Commercial Courts Act, 2015 but also Notifications dated 03.11.2016 and 05.05.2020.

7. Accordingly, as proposed by the Counsels, without prejudice, both the impugned orders are set aside, and the matter is remanded in the first instance to the Court of Principal District Judge, South Goa, to be dealt with as above. The parties are to now appear before the Principal District Judge on 06.03.2023 at 2.30 pm. and file an authenticated copy of this order.

8. The petition is disposed of with consent in the above terms. There shall be no order for costs. Liberty to apply.

M. S. SONAK, J.

NITI K
HALDANKAR

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NITI K HALDANKAR
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