

Andreza

**IN THE HIGH COURT OF BOMBAY AT GOA
COMPANY APPLICATION (MAIN) NO. 02 OF 2022**

Fernandes Realtors Pvt. Ltd. herein by its Aut. Sign. John Loume	... Applicant
<i>Versus</i>	
Official Liquidator for Goan Wonderland Properties Pvt. Ltd. & 3 Ors.	... Respondents

Mr. Raunaq Rao, Advocate *for the Applicant.*

Mr. R. G. Ramani, Senior Advocate *with Mr. P. Kakodkar,*
Advocate for the Respondents.

Ms. Amira Razaq, Advocate *for the Official Liquidator.*

CORAM: B. P. COLABAWALLA, J
DATED: 5th JANUARY 2023

ORAL ORDER

1. The above application is filed seeking leave in terms of Section 446 of the Companies Act, 1956, to continue Special Civil Suit No. 44/2008/B, pending before the Court of Civil Judge, Senior Division 'B' Court, at Panaji, Goa, filed by the Applicants herein.

2. The learned Advocate appearing on behalf of the Applicants submitted that leave is necessary because in the plaint filed before the Court of Civil Judge, Senior Division, seeks a money decree not only against the Company in liquidation but also against Defendant Nos. 2 and 3 jointly and severally. This liability, according to the

Applicants, arises pursuant to a Memorandum of Understanding dated 28 November, 2006. The learned Counsel submitted that if leave is not granted and the Applicants are relegated to making their claim before the liquidator, there is a very strong possibility of there being conflicting judgments/orders. This is apart from the fact that the Applicants would have to lead evidence before two different Fora. He, therefore, submitted that in the facts of the present case, leave under 446 of the Companies Act, 1956, be granted.

3. On the other hand, the learned Counsel appearing on behalf of the Liquidator, submitted that leave ought to be rejected because by the present application, what the applicants seek to do is to convert the role of the Liquidator from an adjudicator to that of a contesting Defendant. This should not be permitted. The second ground on which the application is opposed is that this is an unnecessary litigation against the Company and the Company would incur unnecessary and avoidable expenditure.

4. I have heard the learned Counsel for the parties. The decree claimed in the suit filed by the Applicants is a monetary claim not only against the company in liquidation but also against Defendant Nos. 2 and 3. I find considerable force in the arguments canvassed by the learned Advocate appearing for the Applicants that if leave is not granted, there is every possibility of there being conflicting orders,

one passed by the Civil Court and the other by the Liquidator, if any claim is made before it. This is apart from the fact that the Applicants would have to lead evidence before two different Fora, namely, one before the Civil Court and the other before the Official Liquidator.

5. In these circumstances, I am unable to accept the submissions canvassed on behalf of the Liquidator that leave ought not to be granted. To avoid conflicting orders as well as multiplicity of proceedings, in my opinion, discretion ought to be exercised in favour of the Applicants and leave ought to be granted.

6. In these circumstances, the above application is allowed in terms of prayer clause (a), which reads thus :-

“(a) That, this Hon'ble Court may, by way of an order be pleased to grant leave in terms of Section 446 of the Companies Act, 1956 to the Applicants to continue the civil suit viz. Special Civil Suit No. 44/2008/B pending before the Court of Civil Judge Senior Division 'B' Court at Panaji, Goa.”

7. It is made clear that in the event the Plaintiff does not succeed before the Civil Court against the company in liquidation, the Liquidator shall be entitled to claim the actual costs incurred in defending the application. If such a claim is made, the same shall be decided by the Civil Court in accordance with law.

8. The Liquidator shall be entitled to file a written statement on behalf of the Company in liquidation before Civil Judge, Senior Division, 'B' Court, at Panaji, within a period of eight weeks from today.

9. The application is disposed of in the aforesaid terms. However, there shall be no order as to costs.

10. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

B. P. COLABAWALLA, J

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