

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.659 OF 2018

1. MRS. ZAHIDA HUSSAIN, D/o Shaik Mohidin, major in age, resident of Flat No.103, 1st floor, Murgao Avenue, Near Desterro Chapel, Vasco-da-gama, Goa, through Power of Attorney holder Mr. Shaikh Rafat.

2. MR. SHAIK HUSSAIN SHAIK MOOSA, son of Shaik Moosa Shaik Hussain, major in age, (since deceased, through LR's)

2A) Mr. Maksood Shaik Hussain, age 49 years, resident of Murgao Avenue, Flat No.102, near Desterrow Church, Mormugao, Vasco.

2B) Mrs. Zahira Shaik, wife of Maksood Shaikh Hussain, age 41 years, resident of Murgao Avenue, Flat No.102, near Desterrow Church, Mormugao, Vasco.

2C) M. Riyaz Shaik Hussain, age 48 years, resident of Murgao Avenue, Flat No.202, near Desterrow Church, Mormugao, Vasco.

2D) Mrs. Rizwana Shaik, wife of Riyaz Shaikh Hussain, age 48 years, resident of Murgao Avenue, Flat No.202, near Desterrow Church, Mormugao, Vasco.

2E) Mr. Rafat Shaik Hussain, age 47 yrs, address Murgao Avenue, Flat No.203, near Desterro Church, Mormugao, Vasco.

2F) Mrs. Nazneen Shaik, wife of Rafat Shaik Hussain, age 42 yrs, address Murgao Avenue, Flat No.203, near Desterro Church, Mormugao, Vasco.

2G) Mr. Zain Shaik Hussain, age 44 years, address Mohidin Affluence, Second Floor B202, Opposite Vaddem Lake, Vasco.

2H) Mrs. Alia Shaik, wife of Zain Shaikh Hussain, age 40 years, address Mohidin Affluence, Second Floor B202, Opposite Vaddem Lake, Vasco.

2I) Mr. Rizwan Shaik Hussain, age 35 years, address Murgao Avenue, Flat No.103, near Desterro Church, Mormugao, Vasco.

2J) Mrs. Anisa Shaik, wife of Mr. Rizwan Shaik Hussain, age 33 years, address Murgao Avenue, Flat No.103, near Desterro Church, Mormugao, Vasco.

... Petitioners

Versus

MR. ABDUL KARIM NOOR MOHAMMED, s/o Noor Mohammed, major in age, resident of Karma Express, 2nd Floor, Flat No.S/3, Opposite Roys Petrol Pump, Vasco-da-Gama Goa.

... Respondent

Mr. Dharmanand R. Vernekar, Advocate for the Petitioners.
Mr. Balkrishna Sardesai, Advocate for the Respondent.

CORAM: M. S. SONAK, J.

DATED : 3rd FEBRUARY 2023

ORAL JUDGMENT

1. Heard Mr. D. Vernekar, learned counsel for the Petitioners and Mr. B. Sardesai, learned counsel for the Respondent.
2. Rule. The rule is made returnable immediately with the consent and at the request of the learned counsel for the parties.
3. The challenge in this petition is to the order dated 09.05.2018 by which the Petitioners were declined leave to produce additional documents.
4. The Petitioners are the defendants in Special Civil Suit No.7/2010/B seeking a decree of specific performance. One of the Petitioners' defence was that the suit property was already transferred to a partnership firm hotel 'Sultan Plaza'.
5. During the course of the cross-examination of one of the defendants the questions were posed to the defendant whether he has any further documents relevant to the defence of transfer. At this stage, the application seeking leave to produce additional documents was made.

6. The documents that the Petitioners seek to produce are registered mortgage deed and deed of reconveyance executed between hotel 'Sultan Plaza' and EDC Ltd., a Financial Corporation. Both documents are registered documents and in that sense public documents. The documents also do not appear to be irrelevant.

7. The trial Court has held that since the Advocate for the Petitioners referred to the application being filed under Order 8 Rule 1 of CPC and not under Order 13 Rule 2 of CPC, the same cannot be allowed. Further, the trial Court has held that the Petitioners were always aware of these documents and the delay is not explained.

8. As long as the Court has powers to grant leave to produce additional documents, mere quotation of the wrong section or wrong provision cannot be the basis for the non-exercise of such powers. On the aspect of delay, the learned trial Court is justified in making observations about it. However, based on mere delay, the application could not have been rejected. This is more so because the questions were posed to the witness in cross-examination and it is at this stage that the defendants wish to produce these additional documents.

9. On account of the delay, some prejudice is bound to occasion the plaintiffs. However, this prejudice can always be compensated in terms of costs. Mr. Vernekar has offered to pay costs of ₹30,000/- within a week to the Respondents/Plaintiffs. Besides, the Respondents/Plaintiffs will have the full opportunity to cross-examine

the defendants/witness on these additional documents. All rights available to the Respondents/Plaintiffs are therefore kept intact.

10. For the above reasons, the impugned order dated 09.05.2018 is set aside. The Petitioners' application at Exhibit 163 is allowed subject to the Petitioners paying the Respondents costs of ₹30,000/- within one week.

11. The costs may either directly be paid to the Respondents or deposited before the trial Court within a week from today. If there is a failure, then, this petition is deemed to have been dismissed with costs of ₹10,000/-.

12. Subject to the above, the rule is made absolute. The interim relief is now vacated.

13. The parties to appear before the trial Court on 20.02.2023 at 10.00 a.m.

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

M. S. SONAK, J.

TARI AMRUT NAGESH⁴ Digitally signed by TARI AMRUT NAGESH
Date: 2023.02.06 19:34:25 +05'30'