

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.772/2019

Smt Cruzinha Fernandes, major in age,
w/o Shri Caetano Jose Fernandes,
resident of Tilamol, Xeldem, Quepem,
Goa, through her Power of Attorney
holder Shri Michael Dias, son of
Custodio Dias, age 52 years, r/o
H.No.579, Aggalli, Gogal, Margao, Goa.

... PETITIONER

Versus

1. Dr. Rui Furtado, son of Jose Francisco
Furtado, major of age, R/o Sinquetim,
Navelim, Salcete Goa (since deceased)

1(a). Mr Joao Mateus, aged about 39
years, resident of 270 ESQ, Lumiar
Amexioara, Lisboa, Portugal 1750-027.

1(b) Mr Carlos Casaquinha, aged about
41 years, resident of 270 ESQ, Lumiar
Amexioara, Lisboa, Portugal 1750-027.

2. Mrs Agnes Furtado, Major of age,
landlady, Wife of late Shri Jose Bento
Furtado,

3. Mrs Dipti Furtado, Major of age,
doctor, Wife of Mr. Christoper Furtado,

4. Mr Giovanni Furtado, Major of age,
Service, Son of late Shri Jose Bento
Furtado,

5. Mr Schubert Furtado, Major of age,
Service, Son of late Shri Jose Bento
Furtado and his wife,

6. Mrs Rachael Furtado, Major of age, Service,

7. Mr Avertano Furtado, Major of age, Bachelor, Son of late Shri Jose Bento Furtado, Service, all residents of Sinquetim, Navelim, Salcete, Goa.

8. Mrs Ana Sabian Florida Vaz e Furtado, Major of age, widow, wife of late Jose Francisco Furtado, Landlady, resident of Sinquetim, Navelim, Salcete, Goa.

9. Mrs Yolanda Furtado, Major in age, married, housewife, wife of late Bernard Furtado, resident of Sinquetim, Navelim, Salcete, Goa.

10. Mrs Jemira Furtado, Major in age, married, d/o late Bernard Furtado and her husband,

11. Mr Gautam Shinde, Major of age, Service, Both r/o Navelim, H.No.207, Sinquetim, near Sinquetim Chappel, Salcete, Goa.

12. Mrs Rita Maria Viegas, Major in age, married, d/o late Bernard Furtado and her husband,

13. Mr Anthony Viegas, Major in age, Businessman, Both r/o Navelim, H. No.207, near Sinquetim Chappel, Sinquetim, Navelim Salcete, Goa.

14. Mrs Fabiola Furtado e D'Silva, Major in age, married, d/o late Bernard Furtado, R/o H.No.207, near Sinquetim Chappel, Sinquetim, Navelim Salcete, Goa.

15. Mrs Sena Furtado, Major of age, Service, d/o late Bernard Furtado, R/o Navelim, H. No.207, near Sinquetim Chappel, Salcete, Goa.

16. Miss Sylvia Furtado, Major of age, Spinster, Teacher, d/o late Bernard Furtado, R/o Sinquetim, Navelim Salcete, Goa.

17. Mr Sullivsn Furtado, Major of age, Bachelor, s/o late Bernard Furtado, R/o Sinquetim, Navelim, Salcete, Goa.

18. Shri Christopher Furtado, Major in age, R/o Sinquetim, Navelim Salcete, Goa.

19. M/s. S. B. Kakodkar, Through its Proprietor, Shri Shivprasad B Kakodkar, c/o Smt. Ramabai Bal Crisna Sinai Kakodkar, R/o Vrindavan Bepquegal, Curchorem, Goa.

20. Smt Ramabai Bal Krishna Sinai Kakodkar, w/o late Bal Krishna Suriaji Sinai Kakodkar, R/o Vrindavan Bepquegal, Curchorem, Goa, Since deceased represented through LR's Respondent no.21 to 31.

21. Shri Shivprasad Bal Krishna Sinai Kakodkar, Major in age, Businessman, and his wife,

22. Pratibha Shivprasad Sinai Kakodkar, Major in age, Housewife, Both R/o Vrindavan, Bepquegal, Curchorem, Goa 403706.

23. Smt Rekha Shivanand Telang, Major in age, Housewife, (Since deceased

represented through LR's)

23.a. Smt Shraddha Hede, w/o Abhir Hede, d/o Shivanand Telang, Age 32 years, and her husband

23.b. Shri Abhir Hede, s/o Chandrakant Hede, Age 31 years, Both R/o H.No.426/2, Near Mandaleshwar Temple, Dhuptale, Vazem, Shiroda, Goa.

24. Shri. Shivanand Telang, Major in age, Government Employee, Both residing at H. No. M-86, Housing Board Colony, Gogal, Margao-403601.

25. Smt Gauri Ramesh Sapre, major in age, housewife, (since deceased represented through LR's)

25a. Smt Bilwa Yogesh Prabhu Gaonkar, Daughter of Ramesh Sapre, Major in age, and her husband;

25b. Shri. Yogesh Fati Prabhu Gaonkar, S/o Fati Prabhu Gaonkar, Major in age, Both R/o H.No. 727, Near Betal Tempal, Mahalwada, Paigunim, Canacona, Goa.

25c. Smt. Shruti Mayur Nadkarni, Daughter of Ramesh Sapre, Major in age, and her husband;

25d. Shri Mayur Nadkarni, S/o Krishnanad Nadkarni, Major in age, Both R/o H.No. 14/4-1, Ravinagar, Khadpaband, Ponda Goa.

26. Shri Ramesh Sapre, Major in age, Teacher, Both residing behind Central Bank of India, Housing Board Colony,

Alto Porvorim 403521, Bardez Goa.

27. Smt. Sobha Mohan Dhumaskar,
Major of Age, Government Employee,
and her Husband;

28. Dr. Mohan Dhumaskar, Major of
age, Medical Practitioner, Both residing
at Dr. Dhumaskar's Hospital, Thivim -
403 502, Bardez Goa.

29. Smt Gangabai alias Madhuri Suriaji,
Sinai Kakodkar, widow of late Adv.
Suriaji Balkrishna Sinai Kakodkar, major
of age, housewife, r/o Vrindavan,
Bepquegalle, Curchorem, 403 706.

30. Shri. Pranav Suriaji Sinai Kakodkar,
Major of Age, S/o Late Adv. Suriaji
Balkrishna Sinai Kakodkar, R/o H.No.
5/2350, Behind Pandawa Chapel,
Aquem Alto, Margao Goa.

31. Kum. Shriya Sinai Kakodkar,
Student, minor, D/o Suriaji Balkrishna
Sinai Kakodkar, Represented herein by
her mother Smt. Gangabai alias Madhuri
Suriaji Sinai Kakodkar, r/o "Vrinavan",
Bepquegal, Curchorem, 403 706.

32. Miss Ayana Furtado, d/o Dr. Rui
Furtado, age 17 years,

33. Miss Katia Furtado, d/o Dr. Rui
Furtado, age 16 years,

34. Miss Claudia Furtado, d/o Dr. Rui
Furtado, age 12 years, All resident of
C/o Christopher Furtado, (Respondent
no.18) Near Sinquetim Chappel,
Sinquetim, Navelim, Salcete Goa.

All minors Resp.no.32 to 34 through by their natural guardian, resident of C/o Christopher Furtado, (Respondent no. 18), Near Sinquetim Chappel, Sinquetim, Navelim, Salcete Goa.

35. Mrs. Theresa Furtado, W/o Giovanni Furtado, Major of age, resident of C/o Christopher Furtado, Near Sinquetim Chappel, Sinquetim, Navelim, Salcete Goa.

36. Miss Wilma Furtado, W/o Averteno Furtado, Major of age, resident of C/o Christopher Furtado, Near Sinquetim Chappel, Sinquetim, Navelim, Salcete Goa.

37. Mr. Sacramento D' Silva, Major of Age, resident of C/o Christopher Furtado, Near Sinquetim Chappel, Sinquetim, Navelim, Salcete Goa.

38. Mr Albano Veigas, Major of Age, resident of C/o Christopher Furtado, Near Sinquetim Chappel, Sinquetim, Navelim, Salcete Goa.

39. Shri Pandurang Gangadhar Sinai Shirwaikar, age 58, service in banking, working for UCO Bank (now retired)

40. Smt Sarita alias Crishnabai Pandurang Sinai Shirwaikar, age 56, housewife, all residing at "Gogol" Margao, Goa.

... RESPONDENTS

Mr J. Abreu Lobo, Advocate *for the Petitioner*.

Mr R. G. Ramani, Senior Advocate with Ms K. Betquecar, Advocate *for the Respondents No.2 to 18, 19, 21 and 22 to 31*.

CORAM: M. S. SONAK, J.

DATED: 9th June 2023

ORAL JUDGMENT:

1. Heard Mr J. Abreu Lobo for the Petitioner and Mr R. G. Ramani, learned Senior Advocate who appears along with Ms K. Betquecar for the Respondents No.2 to 18, 19, 21 and 22 to 31.

2. Mr Lobo states that service is complete in this matter. On 16.03.2023, an order was made placing this matter for final disposal at the admission stage.

3. Accordingly, Rule. The Rule is made returnable immediately.

4. The challenge in this petition is to the order dated 17.06.2019 by which the Trial Court allowed an application filed by defendants no.2 to 18 in the Suit and transferred the Suit to the Commercial Court at Margao. The Trial Court held that the dispute between the parties was a “*commercial dispute*” as defined under Section 2(1)(c)(vi) and Section 2(1)(c)(vii) of the Commercial Courts Act, 2015 (said Act).

5. From the perusal of the plaint in the Suit, it is evident that the Suit is for specific performance of the agreement dated 01.02.2000 relating to immovable property. In *Ambalal Sarabhai Enterprises Limited v/s. K. S. Infraspace LLP and Anr. - (2020)*

15 SCC 585, the Hon'ble Supreme Court held that for a dispute to be a commercial dispute, the agreement between the parties must refer to immovable property used/ used exclusively in trade or commerce. The word “*used*” occurring in Section 2(1)(c)(vii) denotes “actually used” and it cannot be either “*ready for use*” or “*likely to be used*” or “*to be used*”. Merely because the property is likely to be used in relation to trade and commerce, the same cannot be a ground to attract the jurisdiction of Commercial Court. Such a wide interpretation would defeat the object of the Commercial Courts Act about the speedy disposal of commercial disputes.

6. In the above regard, useful reference can be made to the observations in paragraphs 13 and 14 of the opinion expressed by A. S. Bopanna, J. and paragraphs 36, 37, 39 and 42 of the concurring opinion expressed by R. Banumathi, J.

7. Paragraphs 13 and 14 of the opinion expressed by A. S. Bopanna, J. read as follows:

13. The learned senior advocate for the appellant would however, contend that a strict interpretation as in the case of taxing statutes would not be appropriate in the instant case where the issue relates to jurisdiction. In that regard, the learned senior advocate has referred to the statement of objects and reasons with which the Commercial Courts Act, 2015 is enacted so as to provide speedy disposal of high value commercial disputes so as to create the positive image to the investors world about the independent and responsive Indian Legal System. Hence, he contends that a purposive interpretation be made. It is contended that a wider purport and meaning is to be assigned while

entertaining the suit and considering the dispute to be a commercial dispute. Having taken note of the submission we feel that the very purpose for which the CC Act of 2015 has been enacted would be defeated if every other suit merely because it is filed before the Commercial Court is entertained. This is for the reason that the suits which are not actually relating to commercial dispute but being filed merely because of the high value and with the intention of seeking early disposal would only clog the system and block the way for the genuine commercial disputes which may have to be entertained by the Commercial Courts as intended by the law makers. In commercial disputes as defined a special procedure is provided for a class of litigation and a strict procedure will have to be followed to entertain only that class of litigation in that jurisdiction. If the same is strictly interpreted it is not as if those excluded will be non-suited without any remedy. The excluded class of litigation will in any event be entertained in the ordinary Civil Courts wherein the remedy has always existed.

14. *In that view it is also necessary to carefully examine and entertain only disputes which actually answers the definition “commercial disputes” as provided under the Act. In the instant case, as already taken note neither the agreement between the parties refers to the nature of the immovable property being exclusively used for trade or commerce as on the date of the agreement nor is there any pleading to that effect in the plaint. Further the very relief sought in the suit is for execution of the Mortgage Deed which is in the nature of specific performance of the terms of Memorandum of Understanding without reference to nature of the use of the immovable property in trade or commerce as on the date of the suit. Therefore, if all these aspects are kept in view, we are of the opinion that in the present facts the High Court was justified in its conclusion arrived through the order dated 01.03.2019 impugned herein. The Commercial Court shall therefore return the plaint indicating a date for its presentation before the Court having jurisdiction.”*

8. Paragraphs 36, 37, 39 and 42 of the concurring opinion expressed by R. Banumathi, J. read as follows:

36. A perusal of the Statement of Objects and Reasons of the Commercial Courts Act, 2015 and the various amendments to Civil Procedure Code and insertion of new rules to the Code applicable to suits of commercial disputes show that it has been enacted for the purpose of providing an early disposal of high value commercial disputes. A purposive interpretation of the Objects and Reasons and various amendments to Civil Procedure Code leaves no room for doubt that the provisions of the Act require to be strictly construed. If the provisions are given a liberal interpretation, the object behind constitution of Commercial Division of Courts, viz. putting the matter on fast track and speedy resolution of commercial disputes, will be defeated. If we take a closer look at the Statement of Objects and Reasons, words such as 'early' and 'speedy' have been incorporated and reiterated. The object shall be fulfilled only if the provisions of the Act are interpreted in a narrow sense and not hampered by the usual procedural delays plaguing our traditional legal system.

37. A dispute relating to immovable property per se may not be a commercial dispute. But it becomes a commercial dispute, if it falls under sub-clause (vii) of Section 2(1)(c) of the Act viz. "the agreements relating to immovable property used exclusively in trade or commerce". The words "used exclusively in trade or commerce" are to be interpreted purposefully. The word "used" denotes "actually used" and it cannot be either "ready for use" or "likely to be used" or "to be used". It should be "actually used". Such a wide interpretation would defeat the objects of the Act and the fast tracking procedure discussed above.

39. It appears that the trial court has proceeded under the footing that the parties to the suit more particularly, the appellant-plaintiff seems to be carrying on business as Estate Agent and to manage land, building, etc. and the very object as enumerated in Memorandum and Articles of

Association of the appellant-plaintiff company established that the property in question are being used exclusively in trade or commerce rather in the business of the plaintiff. As rightly pointed out by the High Court, there is nothing on record to show that at the time when agreement to sell came to be executed in 2012, the property was being exclusively used in trade and commerce so as to bring dispute within the ambit of sub-clause (vii) of Section 2(1) (c) of the Act. Merely because, the property is likely to be used in relation to trade and commerce, the same cannot be the ground to attract the jurisdiction of the Commercial Court.

42. The object and purpose of the establishment of Commercial Courts, Commercial Divisions and Commercial Appellate Divisions of the High Court is to ensure that the cases involved in commercial disputes are disposed of expeditiously, fairly and at reasonable cost to the litigants. Keeping in view the object and purpose of the establishment of the Commercial Courts and fast tracking procedure provided under the Act, the statutory provisions of the Act and the words incorporated thereon are to be meaningfully interpreted for quick disposal of commercial litigations so as to benefit the litigants especially those who are engaged in trade and commerce which in turn will further economic growth of the country. On the above reasonings, I agree with the conclusion arrived at by my esteemed brother A.S. Bopanna, J.”

9. In this case, The Trial Court did not have the benefit of the decision of the Hon'ble Supreme Court in the case of *Ambalal Sarabhai Enterprises Limited (supra)*. Therefore, the learned Trial Court's view is no longer consistent with the law laid down by the Hon'ble Supreme Court in the case of *Ambalal Sarabhai Enterprises Limited (supra)*. Consequently, the impugned order will have to be set aside, and the Suit will have to proceed before

the Civil Court and not before the Commercial Court. It is ordered accordingly.

10. The impugned order is therefore set aside. The Rule is made absolute. There shall be no order for costs.

11. All concerned to act on the authenticated copy of this Order.

12. The parties to now appear before the Civil Court on 26.06.2023 at 2.30 p.m. and file an authenticated copy of this Order.

M. S. SONAK, J.

SUCHITRA Digitally signed by
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