

Niti

IN THE HIGH COURT OF BOMBAY AT GOA

**WRIT PETITION NO.897 OF 2019
AND
MISC. CIVIL APPLICATION NO.225 OF 2022**

1. M/S K.C. CONSTRUCTION
COMPANY, having its business Office,
G-2, Utopia, 5, St. Andrew's Road,
Bandra (W), Mumbai-400050, Through
its partners, Petitioner Nos. 2 & 3.

2. MRS. COLLETTE JEREMIAS
DSOUZA, Married, major in age, wife of
Mr. Jeremias D'Souza, Indian National,
business, having its Office, G-2, Utopia,
5, St. Andrew's Road, Bandra (W),
Mumbai-400050, through POA,
Petitioner No.3.

3. Mr. JEREMIAS DSOUZA,
son of Late Thomas D'Souza,
aged about 61 years, Married, Indian
National, business, having its Office,
G-2, Utopia, 5, St. Andrew's Road,
Bandra(W), Mumbai-400050

....PETITIONERS

Versus

1. MRS. ARLINDA DOS ANJOS DIAS
TORRES E FERNANDES, daughter of
Prudent Torres, wife of late Alvito Stevao
Manuel Fernandes, aged 88 years, Indian
National, widow, residents of Rock —
Dale, flat 2/ground floor, 93 St. Sebastian
Road, Bandra, Mumbai.

1A) Mrs. Gorette D'silva, Major in age,

1B) Mr. Alvito D'silva, Major in age,

Both R/O Creado Apartments,
Seasar Road, Ambolim,
Andhari West, Mumbai.

1C) Mr. Anjeeto Fernandes, major of age,

1D) Mrs. Inacinha Fernandes, major of
age,

Both R/O C. Block,
Golden Jubilee building,
St. Francis Xavier J.S.S Road,
Mumbai 40002.

2. MR. AMAVEL FERNANDES,
son of late Alvaro Fernandes, aged 66
years, married, retired, Indian national,
residents of Rock - Dale, flat 2/ground
floor, 93 St. Sebastian Road, Bandra,
Mumbai

3. MRS. SYLVETRE FERNANDES,
daughter of Timothy Fernandes, wife of
Mr. Amavel Fernandes, aged 58 years,
married, house wife, Indian national, all
the above are residents of Rock —Dale,
flat 2/ground floor, 93 St. Sebastian
Road, Bandra, Mumbai

4. Mr Lenin Viegas,
Son of Carlos Viegas, Aged 36 years,
Married, Business, resident of H. No.E -
442. Odlem bhat Taleigao,
Tiswadi — Goa

5. Mr. Macharam Solanki,
Indian National, Business, Having his
office at C/O Dheeraj Electricals, Shop

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No. 1, Furtado Building, Opp. Vaidya
Hospital, Near Municipal Market, Bardez
- Goa.

6. Mr. Kailash Bharti,
Indian National, Business, Having his
office at C/O Laxmi Fancy Stores, Rizvi
Sadan, Panaji, Tiswadi, Goa

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....RESPONDENTS

**Mr Sudin Usgaonkar, Senior Advocate with Ms Pooja Naik,
Advocate for the Petitioners.**

Mr J.A. Lobo, Advocate for Respondent Nos.1,2 & 3.

Mr A.D. Bhobe, Advocate for Respondent No.4.

CORAM: M. S. SONAK, J.

DATE : 17th MARCH 2023

ORAL JUDGMENT :

1. Heard Mr Usgaonkar, learned Senior Advocate, who appears along with Ms Pooja Naik for the petitioners. Mr J.A. Lobo appears for respondent nos.1,2 & 3 and Mr A.D. Bhobe appears for respondent no.4.

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

3. The challenge in this petition is to the orders dated 27.06.2019 and 25.09.2019, by which written statements filed on behalf of some of the respondents were permitted to be taken on record.

4. From the perusal of the impugned orders, it is apparent that the respondents had filed applications seeking condonation of delay and the petitioner (original plaintiff) had filed the response urging that the cause shown was not sufficient. However, neither the applications/replies nor the impugned orders reflect that the grounds which are now sought to be raised in this petition were ever raised.

5. Mr Usgaonkar states that the Commercial Court lacks jurisdiction to accept a written statement filed beyond 120 days from the date of service of summons. He relies on *M/s SCG Contracts (India) Private Limited V/s. K.S. Chamankar Infrastructure Private Limited & Ors.*¹ in support of this contention.

6. On the other hand, Mr Lobo and Mr Bhobe submitted that the suit was not initially instituted before the Commercial Court but was transferred to the Commercial Court at a later point of time. Accordingly, they submit that their case is covered by *Raj Process Equipments & Systems Pvt. Ltd. & Ors. V/s. Honest Derivatives Pvt. Ltd.*². Mr Lobo and Mr Bhobe submitted that there are at least three decisions of this Court which support their contention.

1 (2019) 12 SCC 210

2 2022 LiveLaw (SC) 928

7. However, as noted earlier, since this point was neither raised nor was the same considered by the Commercial Court whilst passing the impugned orders, it would be appropriate if the impugned orders are set aside and the learned Commercial Court is directed to hear and decide the applications made by the defendants for taking on record the written statement afresh and in accordance with law. Until such applications are decided, the written statements which have already been taken on record may be retained. However, such retention would be subject to the orders that the Commercial Court would make in the applications filed by the defendants. These applications have been styled as Exhibit D-38 and Exhibit D-56.

8. At the request of the learned Counsel for the parties, it is clarified that this Court has not expressed on the rival contentions and, therefore, all contentions of all parties on facts and law are kept open.

9. The stay granted by this Court on further proceedings in the suit is hereby vacated. The parties to now appear before the Court on 28.03.2023 and file an authenticated copy of order. In case any of the parties do not appear, the Commercial Court should issue notice to them or their advocates about the next date.

10. The Commercial Court should dispose of the above applications as expeditiously as possible and, in any case, within three months from the date the parties file authenticated copy of this order.

The rule is made absolute in the above terms. There shall be no order for costs.

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

12. Misc. Civil Application no.225/2022 is also disposed of.

M. S. SONAK, J.

NITI K
HALDANKAR

Digitally signed by NITI
K HALDANKAR
Date: 2023.03.17
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