

IN THE HIGH COURT OF BOMBAY AT GOA**LD-VC-CW-310-2020**

1. Mr. Rohit Bras De Sa,
S/o Antonio Bras De Sa,
aged 47 years,
2. Mrs. Priti Bras De Sa,
W/o Rohit Bras De Sa,
Both residing at 1/F-1 &
1/F-2, Models Marine Vista,
Aivao, PO Dona Paula,
Ilhas, Goa 403 004. Petitioners

Versus

1. M/s Models Leisure Ventures,
Partnership Firm registered under
Indian Partnership Act,
having its Office at 7th Floor,
Karim Building,
St. Inez, Panaji Goa 403 001,
2. Mr. Peter Vaz,
S/o late Mr. Diogo Vaz,
3. Mrs. Nataline Vaz,
W/o Mr. Peter Vaz,
Both residing at Bungalow D,
Model's Meridien, Marine Road,
Caranzalem, Ilhas Goa 403 002. Respondents

AND**LD-VC-CW-314-2020**

1. Mr. Sudheer Desai,
S/o Prabhakar Desai,
aged 79 years,

2. Mrs. Sanyucta Desai,
W/o Mr. Sudheer Desai,
Both residing at 1/FI-1
Models Marine Vista,
Aivao, PO Dona Paula,
Ilhas, Goa 403 004 ... Petitioners

Versus

1. M/s Models Leisure Ventures,
Partnership Firm registered under
Indian Partnership Act,
having its Office at 7th Floor,
Karim Building,
St. Inez, Panaji Goa 403 001,
2. Mr. Peter Vaz,
S/o late Mr. Diogo Vaz,
3. Mrs. Nataline Vaz,
W/o Mr. Peter Vaz,
Both residing at Bungalow D,
Model's Meridien, Marine Road,
Caranzalem, Ilhas Goa 403 002. ... Respondents

Mr. Aires Rodrigues, Advocate for the Petitioners in both the petitions.
Mr. S. S. Kantak, Senior Advocate with Mr. P. Talaulikar, Advocate for
the Respondents.

Coram:- M. S. SONAK, J

Date:- 11th November, 2020

ORAL JUDGMENT

Heard Mr. A. Rodrigues, learned counsel for the Petitioners

in both these petitions and Mr. S. S. Katak, learned Senior Advocate who appears alongwith Mr. P. Talaulikar, learned counsel for the Respondents.

2. At the outset, the learned counsel for the parties state that they have no objection to me taking up these petitions.

3. Rule. At the request and with the consent of the learned counsel for the parties Rule is made returnable forthwith.

4. Mr. P. Talaulikar, learned counsel for the Respondents waives notice on Rule.

5. The challenge in these petitions is to the order dated 26th October, 2020 made by the learned Adhoc Senior Civil Judge "A" Court, Panaji (Commercial Court) directing the registry to raise an objection in regard to filing report of pre-institution mediation as envisaged under Section 12-A of the Commercial Courts Act, 2015 (the said Act) and to intimate the learned Advocate for the Plaintiffs by email about the objections so raised.

6. Section 12-A of the said Act reads as follows :-

"12-A. Pre-Institution Mediation and Settlement. - (1) A suit, which does not contemplate any urgent interim relief under this Act, shall not be instituted unless the plaintiff

exhausts the remedy of pre-institution mediation in accordance with such manner and procedure as may be prescribed by rules made by the Central Government.

(2) The Central Government may, by notification, authorise the Authorities constituted under the Legal Services Authorities Act, 1987(39 of 1987), for the purposes of pre-institution mediation.

(3) Notwithstanding anything contained in the Legal Services Authorities Act, 1987 (39 of 1987), the Authority authorised by the Central Government under sub-section (2) shall complete the process of mediation within a period of three months from the date of application made by the plaintiff under sub-section (1):

Provided that the period of mediation may be extended for a further period of two months with the consent of the parties:

Provided further that, the period during which the parties remained occupied with the pre-institution mediation, such period shall not be computed for the purpose of limitation under the Limitation Act, 1963 (36 of 1963).

(4) If the parties to the commercial dispute arrive at a settlement, the same shall be reduced into writing and shall be signed by the parties to the dispute and the mediator.

(5) The settlement arrived at under this section shall have the same status and effect as if it is an arbitral award on agreed terms under sub-section (4) of section 30 of the Arbitration and Conciliation Act, 1996 (26 of 1996).]”

7. At least *prima facie*, therefore, a suit where no urgent

interim reliefs are contemplated will have to be instituted after the parties go through the process of pre-institution mediation. Conversely where urgent interim reliefs are contemplated, there may not be any necessity for the parties to go through this process of pre-institution mediation.

8. The issues as to whether the suit, as presented, contemplated urgent interim reliefs or not and consequently, whether *prima facie* bar under Section 12-A(1) of the said Act is attracted or not, are the issues for the learned Commercial Court to decide. However, before any such decision is arrived at, the learned Commercial Court ought to have heard the Plaintiffs or their learned counsel on this aspect. This is more so, since the urgent interim reliefs were applied for in the suit or the Misc. Civil Application in the suit. It is possible that the learned Commercial Court may have intended to hear the Plaintiffs/their learned counsel once the registry were to intimate the objections.

9. In the peculiar facts of the present case, it would be appropriate if the impugned order dated 26th October, 2020 is set aside and the learned Commercial Court is directed to hear the Plaintiffs/learned counsel for the Plaintiffs at an early date on the issue as to whether any urgent interim reliefs are contemplated in the suit and if so, whether bar under Section 12-A(1) is attracted.

10. Mr. Rodrigues, learned counsel for the Petitioners – Plaintiffs states that the Plaintiffs/their counsel will appear before the learned Commercial Court on 23rd November, 2020 at 10.00 a.m. and produce an authenticated copy of this order.

11. The Commercial Court is requested to hear the Plaintiffs/their counsel either on the same date, if convenient or otherwise give a short date in the matter.

12. It is made clear that this Court has not at all examined any contentions on merits and therefore, all contentions of all parties are left open for the decision of the learned Commercial Court.

13. These petitions are allowed in the aforesaid terms.

14. The Rule in these petitions is disposed of in the aforesaid terms. There shall be no order as to costs.

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

M. S. SONAK, J.

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