

IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL REVISION APPLICATION NO. 8 OF 2015

MR. SURYAKANT ANANT VOLVOIKAR AND
ANR.,

... Petitioners

Versus

MR. PAUL FERNANDES.

... Respondent

Mr. V.R. Tamba with Mr. Dhaval Damodar Zaveri, Advocates for the
Petitioners.

Mr. M.B. Da Costa, Senior Advocate with Ms. Soniya G. Chodankar,
Advocate for the Respondent.

Coram:- M. S. SANKLECHA, J.

Date:- 7th April, 2015

ORAL ORDER :

At the request of the parties, the Civil Revision Application is
being disposed of at the stage of admission.

2. The petitioners take exception to the impugned order dated
13/11/2014 rejecting the petitioners' application for rejection of the
plaint under Order 7 Rule 11 of the Civil Procedure Code.

3. After the matter was heard for some time as I was not inclined to
interfere with the impugned order Mr. Tamba, learned Counsel
appearing for the petitioners states that he restricts his objection to
the impugned order only to the extent it holds that "For the reasons
set out above, the Court has already concluded that the suit is within
limitation." It is his submission that the issue of limitation should be
left open to be urged during the trial and the petitioners should not be

foreclosed from challenging the same in view of the aforesaid observations. Besides, he makes a further grievance that as noted in the roznama the trial Judge by an order dated 13/11/2014 has rejected the petitioners' application for taking on record its written statement, in view of the delay. It is prayed on behalf of the petitioners that the trial Court be directed to take on record the petitioners' written statement and, thereafter the suit can go to trial.

4. Mr. M.B. Da Costa, learned Senior Counsel appearing for the respondent opposes the application. In particular, it is submitted that the petitioners themselves called upon the trial Court to issue a ruling on the question whether the suit is barred by limitation and, therefore, they can have no grievance on the above count. Besides as regard the order dated 13/11/2014 as recorded in the roznama, rejecting the petitioners' application for filing written statement is concerned, it is submitted that the same is outside the scope of the present application as there is no specific prayer with regard to the same.

5. So far as the impugned order is concerned there is no reason to interfere with the same. However, the observation in the impugned order that the issue of the suit being within limitation is a concluded issue while dealing with an application under Order 7 Rule 11 of the Civil Procedure Code is not called for. The application under Order 7 Rule 11 of the Civil Procedure Code is disposed of on the basis of the pleadings in the plaint. In view of the above, it is made clear that

the trial Court while proceeding with the suit shall not in any manner be influenced with the aforesaid observations while deciding the issue of limitation. So far as the rejection of the petitioners' request to take written statement on record is concerned as recorded in the roznama dated 13/11/2014, the objection on behalf of the respondents is hypertechnical. The interest of justice would require that the written statement be taken on record, notwithstanding the delay on the part of the petitioners in filing the written statement. This delay according to the petitioners was on account of the fact that the application under Order 7 Rule 11 of the Civil Procedure Code was awaiting disposal at the hands of the trial Judge. Thus, even if no specific prayer with regard to the aforesaid relief has been asked for in the Civil Revision Application, the interest of justice would require that the trial Judge be directed to take on record the written statement filed by the petitioners and thereafter frame issues to consider the rival contentions on merits.

6. With the above observations, the Civil Revision Application is disposed of. As this Court had granted an ad interim stay to the proceedings, the parties are directed to appear before the trial Court on 30/04/2015 at 10.00 a.m. for further proceedings.

M. S. SANKLECHA, J.

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