

IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL REVISION APPLICATION NO. 11 OF 2015

M/S COSTA PINTO AND ASSOCIATES,
THROUGH ITS PARTNERS AND 2 ORS.,

... Petitioners

Versus

PRESTIGE HOLIDAY RESORTS LTD.,

... Respondent

Mr. R. G. Ramani, Advocate for the Petitioners.

Coram:- M. S. SANKLECHA, J.

Date:- 31st March, 2015

P.C.:

This application is directed against the order dated 31/1/2015 passed by the IInd Additional Adhoc Civil Judge, Senior Division at Margao. By the impugned order, the petitioners' application for rejection of the plaint under Oder 7 Rule 11 of C.P.C was dismissed.

2. The petitioners sought rejection of the plaint on various grounds. However before me, the only ground urged for rejection of the plaint is that it does not disclose any cause of action and therefore, Civil Judge Senior Division ought to have rejected the plaint.

3. The impugned order on consideration of the submissions and the averments in the plaint holds that the plaint discloses a cause of action and whether or not the same was sufficient for grant of reliefs would be considered at the trial. In these circumstances, the

impugned order holds that it would not be fair to shut out the plaintiff at the very threshold.

4. The grievance of the petitioner is that the plaint as filed seeks a decree of specific performance of agreements for sale dated 19/6/1995, 4/11/1995 and 22/9/1996, which no longer subsists in view of novation as contained in agreement dated 19/7/1998. In the above circumstances, it is contended that the plaintiff could not have sought specific performance of the earlier agreements dated 19/6/1995, 4/11/1995 and 22/9/1996 which stood modified by the agreement dated 19/7/1998. Mr. Ramani, learned counsel appearing for the petitioners was at pains to point out that nothing was to be done under the agreement dated 19/7/1998 as it was, an agreement made in full and final settlement between the parties. Thus the plaint discloses no cause of action and the trial Judge ought to have returned the plaint.

5. I find that the respondents in its plaint have not only sought specific performance of earlier agreements dated 19/6/1995, 4/11/1995 and 22/9/1996 but also sought specific performance of the agreement dated 19/7/1998. The agreement dated 19/7/1998 also requires the parties concerned to further discharge obligation under the agreement. The full and final settlement referred to in the agreement dated 19/7/1998 is on the payment of Rs.35 lakhs. It is noted that paragraphs 12 to 15 of the plaint thus disclose a cause of

action for filing the present suit.

7. The impugned order dated 31/1/2015 is passed on the basis of the pleadings before the Court. The refusal to exercise jurisdiction to reject the application of the petitioner under Order 7 Rule 11 of C.P.C. cannot be faulted. Thus, it is not a case where the Civil Judge Senior Division has exercised jurisdiction either illegally or with material irregularity warranting interference in a Revision.

8. In view of the above, I see no reason to interfere with the impugned order. Accordingly the civil revision application is dismissed.

M. S. SANKLECHA, J.

ap/-