

IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL REVISION APPLICATION NO. 36 OF 2014

VILLAGE PANCHAYAT THR. ITS
SECRETARY

... Petitioner

Versus

MRS. SHOBHA BHANDARI AND ANR.,

... Respondents

Mr. Sahish Mahambrey, Advocate for the petitioner.

Coram:- M. S. SANKLECHA, J.

Date:- 1st April, 2015

ORDER :

This civil revision application challenges the order dated 25 July, 2014 passed by the Civil Judge, Junior Division, Panaji.

2. By the impugned order, the petitioner's application for dismissal of the suit on the ground that the suit as filed is essentially with regard to a public nuisance was rejected. As it was filed without having obtained leave of the Court, as required under Section 91(1) of the Civil Procedure Code.

3. The impugned order records that the suit as filed by the respondents (original plaintiff) is for permanent and mandatory injunction, to restrain the petitioner from inter alia carrying on business of selling chicken as it affects the business of the respondents. The impugned order proceeds on the basis that the suit

has been filed not only against public nuisance but there are specific pleadings in the plaint indicating that injunction is sought as the business of the respondents is affected by the petitioner carrying on business illegally in a structure which is not authorised. In the above view, the impugned order comes to the conclusion that the suit as filed is on cause of action that the petitioner is being affected by virtue of business carried on by the petitioner is an unauthorised structure.

4. Section 91(2) of Civil Procedure Code specifically provides that, nothing in Sub-section (1) regarding public nuisance shall be deemed to limit or otherwise affect any right to file suit which may exist independently. Further the impugned order is not shown to be passed without jurisdiction or for want of jurisdiction or in an illegal or with material irregularity. In the above circumstances, the civil revision application is dismissed.

M. S. SANKLECHA, J.

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