

IN THE HIGH COURT OF BOMBAY AT GOA.

Writ Petition No. 833/2015

1. Dr. Shaba Rama Naik Gaonkar
alias Chandrakant Rama Naik Gaonkar
major in age, married, Businessperson
r/o Ruby Residency Canacona, Goa.
2. Mr. Vinod Naik
major of age, Married, Businessperson
r/o "COLOMB" Nagorsem Palolem
Canacona, Goa.
3. Mr. Suraj Naik
major in age, married, Businessperson
r/o "COLOMB" Nagorsem Palolem
Canacona, Goa.

PETITIONERS

VERSUS

1. WHITE RAJ RESORT PRIVATE LTD.
a private limited company
duly incorporated under
Indian companies Act 1956
represented herein by its authorized officer
Shri Ulhas Datta Warik
Son of late Datta Warik,
aged about 65 years,
r/o H.No.42/B, Patnem, Canacona, Goa.
2. State of Goa
through Chief Secretary,
Secretariat Complex
Porvorim, Goa.
3. Chief Officer
Canacona Municipal Council
Canacon-Goa.
4. Department of Tourism
through its Director
Panaji-Goa.
5. Electricity Department
through its Chief Engineer
Panaji-Goa.

6. CRZ
through its Member Secretary
Dempo Towers, Patto,
Panaji Goa.

RESPONDENTS.

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Mr. Rohit Bras De Sa, Advocate for the petitioners.
Mr. Siddarth Samant, Advocate for respondent no.1.
Mr. Sagar Dhargalkar, Additional Government Advocate for
respondent nos. 2, 5 and 6.

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CORAM : K.L. WADANE, J.
RESERVED ON : 04/12/2015.
PRONOUNCED ON: 07/12/2015.

JUDGMENT:

1] Heard Mr. Rohit Bras De Sa, learned Advocate for the petitioners, Mr. Siddarth Samant, learned Advocate for respondent no.1 and Mr. Sagar Dhargalkar, learned Additional Government Advocate for respondent nos. 2, 5 and 6.

2] Rule. Rule returnable forthwith. By consent, heard forth. The learned Advocates appearing for the respective respondents waive notice on behalf of the respondents.

3] The respondent no.1 herein - the original plaintiff filed a suit against the petitioners and other respondents for permanent injunction, damages and other reliefs. It is contended by the petitioners that no relief is claimed against the said authorities i.e. respondent nos. 2 to 6 and only to give jurisdiction to file a suit before the District Court, the said authorities have

been arrayed as defendants.

4] On the ground of urgency, the respondent no.1 moved an application under Section 80(2) of the Code of Civil Procedure on 10th March, 2015. The learned District Judge-I granted the application ex parte without hearing the petitioners even though all the reliefs as prayed for, are against the petitioners only and no reliefs are prayed against the respondent nos. 2 to 6. The summons for the settlement of issues were issued to the respondent nos. 2 to 6 after passing the impugned order dated 13th July, 2015.

5] I have heard the arguments of Mr. Rohit Bras De Sa, learned Advocate for the petitioners and Mr. Siddarth Samant, learned Advocate for respondent no. 1 and Mr. Sagar Dhargalkar, learned Additional Government Advocate for respondent nos. 2, 5 and 6.

6] The main grievance of the petitioners is that the suit is instituted against the said authorities without claiming any relief against them. According to Mr. Rohit Bras De Sa, learned Advocate appearing for the petitioners, the said authorities have been impleaded only with a intent to bring the suit before the District Court.

7] The impugned order is passed without hearing the petitioners. Therefore, in view of the observations in the cases of State of A.P. and others Vs. Pioneer Builders, A.P. reported in (2006)12 SCC 119 and State of Kerala and others vs. Sudhir Kumar Sharma and others (2013) 10SCC 178, the impugned order passed by the learned trial Court is improper and illegal.

8] During the course of arguments Mr. Samant, learned Advocate appearing for the respondent no.1, has argued that the notice of the application under Section 80(2) of the Code of Civil Procedure was already given to the defendants i.e. State Government and its officials. They failed to file their reply and thereafter the learned trial Court has passed the impugned order.

9] I have gone through the Notice/Presentation No.446/2015 from which it is seen after perusal of the application under Section 80(2) of the Code of Civil Procedure and after hearing the Advocate of the plaintiff, the Court has passed an order to issue notice to the defendant nos. 4 to 8 which has been duly served upon them and *in spite* of service of notice, they failed to file their reply and therefore, the notice under Section 80 of the Code of Civil Procedure is dispensed with. It is material to note that the petitioners are the private parties as defendant nos. 1 to 3 and for institution of a suit against them, it is not

required to issue them a notice under Section 80 of the Code of Civil Procedure.

10] During the course of arguments, the learned Advocate appearing for the original plaintiff makes a statement that defendant nos. 4 to 8 have already moved an application under the provisions of Order VII Rule 11 of the Code of Civil Procedure, which is still pending. In such circumstances, the aggrieved person can raise the objection about the maintainability of the suit if such grounds are available to them. Here in the present case, before institution of the suit, the plaintiff has issued notice to the defendant nos. 4 to 8 and *in spite* of service of notice, they failed to file their reply. Therefore, the learned Trial Judge has passed the impugned order. Therefore, I do not think that the impugned order is passed without hearing the concerned defendants.

11] For the reasons stated above, I do not think that the order passed by the Trial Court is incorrect or improper. Hence, there is no substance in the writ petition. Accordingly, it is dismissed with no order as to costs. Rule is discharged.

K.L.WADANE, J

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